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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

11 CR 576 (WHP)

5 JOSHUA MEREGILDO, MELVIN
6 COLON, EARL PIERCE, and
7 NOLBERT MIRANDA,

Defendants.

8 -----x

9 New York, N.Y.
10 November 27, 2012
11 10:05 a.m.

12 Before:

13 HON. WILLIAM H. PAULEY III,

14 District Judge

15 APPEARANCES

16 PREET BHARARA
17 United States Attorney for the
18 Southern District of New York
19 NOLA HELLER
20 ADAM FEE
21 SANTOSH ARAVIND
22 Assistant United States Attorneys

23 WINSTON LEE
24 YING STAFFORD
25 Attorneys for Defendant Meregildo

MITCHELL DINNERSTEIN
ANTHONY CECUTTI
Attorneys for Defendant Colon

FLORIAN MIEDEL
AARON MYSLIWIEC
Attorneys for Defendant Pierce

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APPEARANCES (Continued)

GARY BECKER
ALEX LESMAN
Attorneys for Defendant Miranda

ALSO PRESENT:
Special Agent Patrick Collins, ATF
Paralegal Specialist Darci Brady

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1 (In open court; jury not present)

2 THE COURT: Good morning to everyone. The jury is now
3 all here. Are there any matters counsel want to raise before
4 we turn to Mr. Miedel's closing argument? Any issues?

5 MR. MIEDEL: No issues. I think we're having some
6 technical issue that hopefully should be resolved in a second.
7 But other than that, we're good.

8 THE COURT: All right. Once again, Mr. Miedel, the
9 same rules will apply to you as have applied to others
10 yesterday. As soon as you tell me that the technical issue is
11 solved well, we can queue up the jury and bring them out.

12 MR. MIEDEL: Thank you.

13 THE COURT: I don't think the sunshine is going to be
14 a problem for any counsel delivering a closing today.

15 MR. MIEDEL: I think we're ready, your Honor.

16 THE COURT: All right.

17 (Jury present)

18 THE COURT: Good morning, members of the jury. Thanks
19 again for your efforts to get here on time and on a day when
20 the weather is a little bit challenging. We're going to
21 continue with closing arguments this morning.

22 Remember, as I told you yesterday, closing arguments
23 are not evidence. They're argument by counsel about what they
24 believe has been proved or not proved in this case.

25 At this time, members of the jury, I ask that you give

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1 your undivided attention to Florian Miedel, Esq., as he
2 delivers his closing argument on behalf of the defendant Earl
3 Pierce.

4 MR. MIEDEL: Thank you, your Honor.

5 Good morning. So, they teach you in trial lawyer
6 school that you should start a closing argument with a bang, so
7 I hope you don't hold it against me when instead I am agoing to
8 start my closing argument with a discussion about you. Your
9 role. And about the absolutely crucial role that you play not
10 only in the trial, but in the criminal justice system as a
11 whole.

12 You have an extraordinarily difficult task. You have
13 listened and listened and listened for almost eight weeks now.
14 You have heard about various acts, people, places. You've
15 heard from six cooperators, and I can only imagine that after
16 all this time it's hard to keep track of what everybody said.
17 Soon you're going to be asked to take on this extraordinarily
18 difficult task of deciding whether the government has proven
19 the guilt of these four young men beyond a reasonable doubt.
20 And you're going to have to dig through your memory, try to
21 remember how you felt about a particular witness, what you
22 thought about their demeanor, how you thought that they
23 answered the questions. You're going to have to try to figure
24 out who you believed and who you didn't believe. You are going
25 to have to try to reconstruct events that happened more than

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Summation - Mr. Miedel

1 two years ago. You're going to have to make sense out of the
2 jumble of testimony, evidence, and also of the absence and lack
3 of evidence. I don't envy you.

4 But, at the same time, we selected you because we have
5 confidence that you will take on this awesome responsibility
6 with seriousness, with focus, with impartiality. We have
7 confidence that you will do what is right, not what is
8 convenient. Not what is easy.

9 Your decision is going to affect these young men for
10 the rest of their lives. And apart from having and raising a
11 child perhaps or choosing a spouse, this decision, this
12 decision of yours is going to be the most important decision
13 that you will ever make about another person.

14 So, with that in mind, I'm going to make certain pleas
15 of you. First and foremost, and you've heard this before but
16 it cannot be repeated enough. This is not one trial. This is
17 four trials. You must determine whether the government offered
18 actual proof beyond a reasonable doubt, and you must determine
19 that for each individual defendant separately. The evidence
20 has to be analyzed separately.

21 Mr. Mysliwiec and I are concerned about one person,
22 and one person only. That's Earl Pierce over there. And we
23 need you, and more importantly he needs you, to consider the
24 evidence as to him separately.

25 Second, you must trust our system, because that's the

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Summation - Mr. Miedel

1 only way we can trust you. And what do I mean by that? What I
2 mean is you must follow the legal instructions from the judge
3 when he gives them to you tomorrow, whether you like them or
4 not.

5 For example, Mr. Pierce didn't testify. Now, you may
6 have wanted to hear from him. But Mr. Pierce did not testify
7 because under our system, the government must prove a person's
8 guilt beyond a reasonable doubt. A person doesn't have to
9 prove his innocence. And if you think about that for a second,
10 that makes total sense, doesn't it? How hard is it to prove
11 one's innocence? How hard is it to prove that something didn't
12 happen? How hard is it to prove a negative?

13 That kind of burden shouldn't be on an individual
14 person who is being charged with the most serious crimes there
15 are by the United States government. And our founders made
16 clear when they wrote the Constitution that that burden should
17 not fall on the individual. It falls on the accuser; it falls
18 on the government. So, in deciding not to testify, Mr. Pierce
19 relied on you to hold up your end of the bargain which is to
20 follow the law.

21 The same thing applies to the charges in this case.
22 Okay. They're complicated. It's 22 counts. When you see the
23 verdict sheet, you may feel overwhelmed. You may feel tempted
24 to throw up your hands and say this is too hard to work through
25 every element of every charge. You have to take that task

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Summation - Mr. Miedel

1 seriously. You have to take your time. As long as it takes.

2 Some of these charges are interconnected. You'll see,
3 for example, just as an example, count 22, which is gun
4 possession in furtherance of the drug conspiracy, you'll see
5 that in order to find anyone guilty of that, you first have to
6 find the person guilty of participating in the narcotics
7 conspiracy. First you have to see whether the government has
8 proved that count, the narcotics conspiracy. It doesn't matter
9 whether you agree with that or not, right. So, for example,
10 you may find that somebody had a gun, but not that they
11 participated in the narcotics conspiracy. That means you have
12 to vote not guilty, even if you think, oh my God, that person
13 is getting away with having a gun. It's crucial that you
14 follow the law. Because everyone in this courtroom and beyond
15 expects and relies on that, and we know that you will.

16 All right. Let me turn to the case now. Earl Pierce
17 is charged in 11 of the 22 counts. But really, those 11 counts
18 are spread over essentially four different factual scenarios.
19 First, did the government prove beyond a reasonable doubt that
20 he committed or aided and abetted in the murder of Jason
21 Correa. Second, did the government prove beyond a reasonable
22 doubt that Earl Pierce participated -- that he shot or tried to
23 kill Tarean Joseph on September 13, 2010. Third, did the
24 government prove beyond a reasonable doubt that Earl Pierce was
25 involved in the narcotics conspiracy, the charged narcotic

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Summation - Mr. Miedel

1 conspiracy. Not did he sell drugs, but was he involved in that
2 charged narcotics conspiracy. And fourth, did the government
3 prove beyond a reasonable doubt that the racketeering
4 enterprise, first existed, and second that he was actually part
5 of the racketeering enterprise. We'll talk through each one of
6 those in turn.

7 So what is the actual evidence that the government
8 presented against Earl Pierce? What were the broad categories
9 of evidence that the government presented? Mr. Fee yesterday
10 gave you a very comprehensive discussion about the evidence
11 with a very pretty PowerPoint presentation that I cannot hope
12 to match. He talked about witnesses, physical evidence, guns,
13 pictures, Facebook, everything, right.

14 You know what? When it comes to Earl Pierce, there is
15 really only one category of evidence, and that's cooperators.
16 Against Earl Pierce -- and again, I remind you, I'm only
17 talking about Earl Pierce -- that is the only category of
18 evidence that exists.

19 Why do I say that? Well, let's start with physical
20 evidence, okay. We know obviously there is no fingerprint
21 evidence linking Earl Pierce to anything in this case. We know
22 there is no DNA evidence linking Earl Pierce to anything in
23 this case, to the guns, to the drugs, to crime scenes, nothing.
24 Right. And that's not for lack of looking. We heard from the
25 police officers that they took -- swabbed his DNA and they

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Summation - Mr. Miedel

1 tried to match it against evidence that they found on the
2 scene, but there was no such match. There is no hair or fiber
3 or anything like that. We didn't hear anything about that.
4 There were three or four guns that were recovered in this case,
5 right. And were any of them found on Earl Pierce? Were any of
6 them found in his apartment, in his girlfriend's apartment?
7 No. Of course they weren't.

8 He's charged in the drug conspiracy, right, and
9 Mr. Fee made a big deal about how strong the evidence was on
10 that. Was there a single bag of drugs, crack, marijuana,
11 whatever, linked in any way to Earl Pierce? Were any drugs
12 found in his apartment, in his girlfriend's apartment, on him?
13 Was he ever arrested for selling drugs during the course of the
14 conspiracy? Did a single undercover police officer come in and
15 say, oh yeah, during the summer of 2010 we bought drugs from
16 Earl Pierce. An informant, did an informant come in and say I
17 went in and made a buy with Earl Pierce? No.

18 What other physical or non-testimony type of evidence
19 is there? Well, over the course of the trial, the government
20 showed you a series, a bunch of photographs, right. Photos
21 from Facebook accounts, from USB memory sticks, from computer
22 hard drives, right. People showing off with guns, people
23 making gang signs, people with cash, people with drugs. GFC
24 parties. And all of those photos, all of those photos, Earl
25 Pierce appears precisely one time. Smiling. That photo was

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Summation - Mr. Miedel

1 found in Joshua Meregildo's hard drive or USB stick.

2 Okay. So what? They know each other. There is no
3 dispute about that. And I bet you if you looked at all the
4 photos, the hundreds and hundreds of photos that were seized
5 from Joshua Meregildo, I'm sure there would be photos of people
6 he knew well, people he didn't know well, acquaintances,
7 friends, whoever.

8 Does this photo prove anything? Does it show Earl
9 Pierce holding a gun or pointing at cash or pointing a finger
10 at his tattoo, anything like that? Is he found in any group
11 photo? And remember, there are lots of group photos that the
12 government showed you. Is he found in any of those? No. Why?
13 We know why. Because every single witness in this case told
14 you he's not GFC, he's not OGFC, he's not YG, he's not Mac
15 Balla. Or to paraphrase Mr. Fee's clever little jazz example,
16 he wasn't in T-Money's band.

17 The government also showed you lots of videos, right.
18 Videos of people rapping, talking trash, video -- there was I
19 think one video of Mr. Miranda doing pullups. And did you see
20 Earl Pierce in any video? None. None whatsoever. Why?
21 Because he wasn't GFC, he wasn't OGFC, he wasn't YG, and he
22 wasn't Mac Balla, right?

23 Does his name appear in any of the other documents
24 that the government submitted? Well, supposedly one time. In
25 the iPod, out of this book of Joshua Meregildo's there is a

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Summation - Mr. Miedel

1 reference to a Ski. Okay. That's it. There is no dispute
2 that they know each other, but that's not clear that's even
3 him.

4 Are there any other categories of evidence that the
5 government brought you? Well, there was a whole lot of
6 discussions about tattoos, remember that? Agent Collins came
7 in and he showed you all the different tattoos that people had,
8 and the cooperators talked about their tattoos and how they
9 were important and what they meant. What about Earl Pierce?
10 What are his tattoos? How are they related to this criminal
11 enterprise? We didn't hear a peep about that from the
12 government. We had to introduce his tattoo. And what does his
13 tattoo say? His tattoo says Ski Box. His nickname. Does his
14 tattoo say GFC, or OGFC, or YG, does it say T-Money, does it
15 say MIP T-Money? No. It says Ski Box. That's it.

16 So, we've got no fingerprints, no DNA, no hair and
17 fiber, no guns, no drugs ever recovered from him or his
18 apartments, no tattoos, one single photo of him smiling, and a
19 possible phone number in an address book. Overwhelming.

20 What about non-cooperator witnesses? Well, there were
21 two of them who testified about Earl Pierce or said something
22 about him at least. That was Maria Ortiz, the sister of Earl's
23 then girlfriend, Wendy, and of course Ms. Perez, Jason Correa's
24 mother. I'm going to talk about their testimony a little bit
25 later. But in brief, Maria Ortiz said nothing in this case

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Summation - Mr. Miedel

1 that alone without more proves any of the 11 charges. You'll
2 see that her testimony is only useful to the government if you
3 believe Bernard Folks. I'm going to have a lot more to say
4 about Bernard Folks in a few minutes. And Iris Perez, Jason
5 Correa's mother, she was his mother. Sympathetic figure, and
6 we feel badly for her about what happened. But did she add to
7 the evidence in this case? No.

8 So, the only category of evidence against Earl Pierce
9 are the cooperators. How do I plan to proceed? Well, first
10 I'm going to start talking generally about -- and hopefully
11 briefly -- about each of the cooperators. And then I'm going
12 to get into the four factual specific crimes that the
13 government has charged Earl Pierce with. The Correa murder,
14 the Tarean Joseph shooting, the drug conspiracy, and the
15 racketeering enterprise. All right. So let's go in order.

16 Bernard Folks. I imagine that this may be the very
17 first time, at least for some of you, I hope, that you've
18 encountered a person like this. A person like this. A robber,
19 a drug dealer, a shooter. This may be the only time you've
20 ever encountered a person who admitted that shooting people
21 felt good. Remember that? He talked about going over to Maria
22 Lopez with his big .44 gun and aiming at people and shooting at
23 people. And I asked him how did that feel, do you feel bad
24 about that? He said no. I said, well, did it feel good? He
25 said yes, it did.

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Summation - Mr. Miedel

1 What kind of person feels that way? A person who has
2 no compassion, no empathy, no conscience, and no guilt. A
3 person who feels good about shooting other people is capable of
4 anything. And you must realize that. A person who shoots off
5 his gun tries to kill others, shoots across an avenue in the
6 middle in the bright light of an afternoon with women and
7 strollers and children walking on the street. Does anyone
8 doubt, does anyone doubt that a person like that is capable of
9 lying when it suits him?

10 And that probably is the most telling thing that
11 Bernard Folks said during his testimony. At the end of my
12 cross-examination I asked him, would you lie to get out from
13 under a 60-year mandatory minimum sentence? And he said no.
14 Really? If he had said yes, of course. I'd lie, I'd rob,
15 steal and cheat too, but the fact is I didn't lie here. Well,
16 that might be believable. But, a guy who wouldn't and didn't
17 hesitate to shoot people, a guy who robbed people on a daily
18 basis, a guy who ordered people to be beaten up in jail,
19 wouldn't lie? Come on. And that lie is just so patently
20 absurd that it casts a shadow on all of his testimony.

21 Mr. Lee on cross-examination asked him a legitimate
22 question. He said, look, if you are just here to tell the
23 truth and admit to what you did and accept responsibility, why
24 didn't you plead guilty? Why become a cooperator? And again,
25 once again, Bernard Folks' answer was telling. He said I can't

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Summation - Mr. Miedel

1 sit in jail for the rest of my life. That's at page 892. I
2 can't. That's right. And that's why he will do whatever it
3 takes, whatever is necessary, to make sure he doesn't spend the
4 rest of his life in prison.

5 You know, Bernard Folks is the guy the government
6 relies on most in its case against Earl Pierce. He's the one,
7 the only one, the only witness who claims that Earl Pierce knew
8 something about the Correa shooting in advance, or at least he
9 suggests it, and we'll talk about that more. He's the only one
10 who claims that Earl Pierce shot face to face at Tarean Joseph
11 on September 13, 2010. He's the key, he is the lynchpin to the
12 government's case against Earl Pierce on the two most serious
13 charges that he faces.

14 They want you to trust him. Ladies and gentlemen, can
15 you? Would you trust Mr. 44 with anything in your personal
16 life? Would you trust him with your wallet? Would you trust
17 him with your house keys? Would you trust him with your
18 infant? Would you trust him with your child's liberty and
19 freedom? I imagine not. Well, Earl Pierce is somebody's son.
20 And I don't think his mother would trust Bernard Folks with her
21 son's liberty either. Please keep that in mind as you think
22 about his testimony.

23 The next witness, the next cooperating witness was
24 Aubrey Pemberton. The thing that struck me about Aubrey
25 Pemberton at least was just how selective his memory was. If

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Summation - Mr. Miedel

1 he didn't want to talk about something, he just said I don't
2 know. I don't remember. Take a look at this section of
3 cross-examination that Mr. Dinnerstein did about the meetings
4 that Pemberton had with the government. This is from
5 approximately two pages of transcript. There has got to be a
6 dozen maybe more answers of I don't know, I don't recall, I
7 have no idea. And that's the kind of witness the government
8 wants you to rely on.

9 And Pemberton's callousness, lack of feeling, empathy,
10 compassion, they were no different than any of these other
11 guys, right. These guys are all emotionally and morally dead.
12 Which means that lying, falsely blaming somebody else, it meant
13 nothing.

14 What was Aubrey Pemberton's response to the question
15 how did it feel to shoot people? Was it I feel badly or was it
16 I didn't think about it at the time, but now as I've had time
17 to reflect on it, it feels bad. No. His answer was I don't
18 know. I haven't thought about it. Those are the words of
19 somebody who has no regard for any other person but himself.
20 How did he respond to questions about why he kept shooting,
21 kept committing crimes. He said if I didn't get caught, I
22 figured it was all right. That's on page 1859. But then, he
23 did get caught. So he had to find a different way out.

24 We also know that Aubrey Pemberton is willing to say
25 what he thinks the government wants to hear. How do we know

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Summation - Mr. Miedel

1 that? Well, let's look at this transcript. This is page 1892.
2 So what's going on here. He's asked during your allocution,
3 and what that means is when he pled guilty, you said you were a
4 member of the Courtlandt Avenue Crew. Yes. Right. And then
5 Mr. Mysliwiec asked him a bunch of questions about GFC and OG
6 and Mac Balla and everything. And he points out there wasn't a
7 Courtlandt Avenue Crew, right? That's just a name that the
8 government made up. Right, that's true. But you came into
9 court and you said you were a member of that crew.

10 Why would he say that? That's what he figured the
11 government wanted to hear. It wasn't true. What he was doing
12 was working his 5K letter. Working it.

13 Okay. Next we have Devin Parsons. Now, I'm not going
14 to waste a lot of words on Devin Parsons. Because Devin
15 Parsons may be the coldest, most remorseless murderer I have
16 ever come across. Killing people, shooting them in the head
17 for no reason meant absolutely nothing to him. And he didn't
18 just shoot people, right, he finished them off. He pumped
19 bullets into defenseless people as they were lying on the
20 ground injured. That takes a special kind of sadism.

21 Perhaps most disturbing, perhaps most disturbing was,
22 right, that he shot and killed a friend. A guy that he hung
23 out with the entire day, chilling on Courtlandt Avenue, joking
24 around. And then at the end of the night, he shoots him in the
25 head and in the body without any feeling whatsoever. I don't

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Summation - Mr. Miedel

1 know about you, but I found that testimony chilling.

2 But what I also find chilling, to be frank, is that in
3 its fixation to get convictions in this case, the government
4 has gone to bed with somebody like Devin Parsons. Get into bed
5 with them. They offered him a deal. They promised to write
6 him a glowing 5K letter. They promised to help him if he has
7 any problems with the state or local officials. They give him
8 the hope and the expectation that even though he murdered two
9 people and tried to kill, what, he said 10 other people? He'll
10 be out soon. He would be playing basketball in Italy.

11 Not only that, but they let him get away with smoking
12 marijuana in jail, keeping an illegal cell phone in jail.
13 That's violating -- not that's not only violating prison rules,
14 that's breaking the law. He's committing crimes. Do they
15 care? He's in direct violation of the cooperation agreement.
16 Not only that, he posts on Facebook that he's cooperating.
17 That has got to be the cardinal rule of cooperation. You don't
18 talk about that. It endangers people. It endangers
19 investigations. And he does it. What happens to him?
20 Nothing. He will get his 5K letter.

21 And what does that tell somebody like Parsons? It
22 tells him that the terms of the cooperation agreement, they're
23 not worth the paper they're printed on. He can do what he
24 wants. And so he did. He lied. He lied. And nothing
25 happened to him. Nothing will happen to him. He's going to

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Summation - Mr. Miedel

1 get his 5K letter and he'll be fine.

2 But just because the government will give him his 5K
3 letter doesn't mean that you have to believe him. Parsons is a
4 cold, compassionless sociopath who acts only in his best
5 interest. There is no question about that. We cannot trust
6 somebody like that, and the fact that the government is asking
7 us to trust him, that is chilling.

8 Next we have Carlos Villafranco. And what was notable
9 about Carlos Villafranco, I think, was that we had a chance
10 with him to sort of get a glimpse behind the curtain. What do
11 I mean by that? Unbeknownst to him, Carlos Villafranco was
12 recorded on the phone talking to a friend of his. And what did
13 he say to them? He said I'll be out in five years or less.
14 This is from a man who is facing up to 145 years in prison. He
15 says, yeah, I'll be home in five years or less. What does that
16 tell you? What does that tell you? That tells you that these
17 guys, these cooperators, have a lot more than hope that they're
18 going to do well. They have an expectation. It goes beyond I
19 just have to tell the truth and I hope I do well. I hope I get
20 a good sentence.

21 Like the others, Carlos Villafranco had a history of
22 lying to protect himself, right. He lied about his names when
23 he was arrested. He lied to the feds in his proffer sessions
24 in order to protect his girlfriend. Of course, let's not
25 forget the craziest thing of all about Carlos Villafranco. He

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Summation - Mr. Miedel

1 comes in and he's going to meet with the prosecutors and the
2 agents, right, he's having these proffer sessions, and he's
3 talking about people in the neighborhood, and he is trying to
4 think about how to cooperate, right.

5 (Continued on next page)

Cbrlmer2

Summation - Mr. Miedel

1 MR. MIEDEL: And what is happening at the same time
2 he's doing that? He's robbing banks. At the same time he's
3 meeting with the prosecutors, he's robbing banks. How crazy is
4 that? And what happens to him? Do the prosecutors say: "You
5 can't be robbing banks and be a cooperator, that's insane"?
6 Nothing happens to him. He got his cooperation agreement, he
7 testified at this trial, and he'll get his 5K letter.

8 So it really can't be any clearer that Carlos
9 Villafranco has no hesitation or even kind of a tiny hesitation
10 to lie in court. Whether it's to federal agents or to federal
11 prosecutors, he has no problem doing that.

12 All right. Moving on, Anthony Crocker. Except for
13 the jailhouse informant Maurice Hagen, Anthony Crocker was the
14 government's last cooperator; right? And he was sort of
15 brought in to tie up loose ends. Now isn't it interesting,
16 isn't it just a wonderful coincidence that -- for the
17 government, at least -- that Anthony Crocker just happens to be
18 everybody's confessor? Everybody apparently, according to him,
19 had this sort of urge to tell him their darkest secrets. Or so
20 he would have you believe. Now mind you, this is a guy who
21 said he was afraid in some ways because he thought that people
22 might have been blaming him for T-Money's death, but at the
23 same time he claims that Earl Pierce, supposedly T-Money's good
24 friend, told him about all kinds of stuff that was relevant to
25 the government. Told him about the Correa murder, told him

Cbrlmer2

Summation - Mr. Miedel

1 about the September 13th shooting. And never mind, by the
2 way, that these conversations supposedly took place at the MDC,
3 in the federal detention center, in front of other people,
4 including, who? Aubrey Pemberton.

5 Now Aubrey Pemberton testified on this stand for three
6 days. Did you hear him say once that he heard these
7 conversations between Crocker and Pierce, where Pierce
8 confessed to participating in the Correa murder or the shooting
9 of September 13th? No.

10 And what's interesting about Crocker is, he didn't
11 actually see anything himself. Did you notice that? He wasn't
12 present for the Correa murder, he wasn't present for the
13 September 13th shooting, he wasn't there for the Alston
14 murder or the Ogarro murder, he wasn't there for most of the
15 Maria Lopez shootings. So what? But he certainly testified
16 about all of that: I heard this, I heard that, I heard Hump
17 say that SB did X. Members of the jury, that's not evidence.
18 That's repeating rumors. That's repeating the word on the
19 street. So what do we have with Crocker? We have trial by
20 gossip; right? Trial by rumor. And that's supposed to be
21 evidence? That's supposed to be proof beyond a reasonable
22 doubt?

23 Last but not least, of course, there was Maurice
24 Hagen. Now I admit, he was -- he was a smooth dude. He
25 couldn't be shaken; right? He couldn't be ruffled. He was

Cbrlmer2

Summation - Mr. Miedel

1 good. He stuck to his story no matter what. But what struck
2 me about him, and maybe it struck you too, he was just a little
3 too smart, too clever, too manipulative to play as dumb as he
4 did. What do I mean by that? Remember he claimed that after a
5 year in federal lockup, he decided to cooperate? He claimed
6 that he didn't really know how it worked, he didn't know what
7 he would be facing, he didn't know what cooperation really was
8 about, he didn't know the difference between good 5K letters
9 and better 5K letters. And even though every other cooperator
10 ultimately conceded that, he had difficulty even admitting that
11 the government decides whether he gets a 5K letter. He wanted
12 us to believe that he was going into that cooperation process
13 blind. Now maybe that would be believable for some guys. But
14 Maurice Hagen? He's not one of them. He was a leader, a
15 natural leader, remember? He had been in charge of half of the
16 Bloods organization in Newburgh. That's -- that was a huge
17 organization. Remember he testified that 50 people had been
18 arrested, members of the Bloods in Newburgh, just a few months
19 earlier before he -- or before he'd gotten out of jail? There
20 were lots of others out there. And he was in charge of half of
21 them. And he also talked about, when he got out of jail, he
22 thought that the Bloods organization was too lax; right? He
23 was there to impose some discipline on them, make sure they
24 were going to meetings. He decided if people were plates.
25 Remember that, plates? A new term. People who needed to get

Cbrlmer2

Summation - Mr. Miedel

1 hurt, beaten up, maybe killed. He decided whether rival drug
2 dealers had to be attacked. He was a boss and he was smart,
3 decisive, manipulative. And we're supposed to believe that
4 this person, after spending almost a year in federal lockup,
5 wouldn't know exactly what the deal was, wouldn't know exactly
6 what cooperation meant, what it meant to get a 5K letter, how
7 to improve your 5K letter? How to get the best 5K letter you
8 can get? Come on.

9 Just a couple more thoughts about this topic before I
10 leave it. Ms. Heller is going to get up and she's going to
11 give a rebuttal later today, and I expect that she'll probably
12 talk about the defense lawyers attacking the credibility of the
13 cooperators, and she's going to say: "You know what, we don't
14 get to pick our witnesses; right? Who else do criminals hang
15 out with but other criminals. We're stuck with these guys.
16 But that doesn't mean they're not telling the truth." Here's
17 my response to that, ladies and gentlemen. Offering excuses
18 for why you don't have evidence is not the same thing as
19 evidence. It's like saying, "Well, the reason we don't have
20 fingerprints in this case is because it's really hard to get
21 fingerprints." Okay. Maybe it is, maybe it isn't. But that
22 doesn't mean it's proof. It's an excuse.

23 She may say that -- she may also say that, you know,
24 "These defense lawyers, they want to have it both ways. You
25 know, they want you to not believe the cooperators when it

Cbrlmer2

Summation - Mr. Miedel

1 suits them and -- and believe -- believe them when it doesn't."
2 But you know what, that argument is wrong on two points. One,
3 as I want to tell you in a second, I don't think you should
4 believe any of them, period. Reject their testimony out of
5 hand. Second, it's obvious that people like that, cooperators,
6 are much more likely to lie about something against somebody --
7 against one of these four defendants, than not; right? Why?
8 Because they have a job to do and they know it. They have to
9 get the 5K letter. Doesn't help them to say, "Well, Pierce
10 didn't have anything to do with this." Doesn't help them to
11 say Earl Pierce had nothing to do with the Correa murder. How
12 does that help? Doesn't. So if Ms. Heller makes that
13 argument, I just want you to keep that in mind.

14 So what it seems like in this case, at least as far as
15 Earl Pierce is concerned, the government, instead of doing
16 what's traditional police work, instead of doing legitimate
17 investigation, instead of determining if there are forensics or
18 witnesses or whatever, they just said, "We have these guys
19 here, these cooperators. That's good enough; right?"

20 And, you know, sometimes you may have thought -- you
21 may have listened to them and you thought, it sounds like that
22 person is probably being honest; right? He's getting all this
23 bad stuff he did off his chest. He's confessing. Like why
24 would he lie about that? Well, to make that assumption, ladies
25 and gentlemen, I think would be a huge mistake, and here's why.

Cbrlmer2

Summation - Mr. Miedel

1 Being a cooperator is strategic and it's calculating. It
2 involves making a really important and difficult decision in
3 your own life; right? And the most important realization that
4 you make as a cooperator -- and if Maurice Hagen had been
5 honest, he would have told you this -- is that your cooperation
6 is worthless and it doesn't help you one bit unless you provide
7 substantial assistance against somebody else. You can confess
8 all you want, you can get all the bad stuff off your chest. It
9 doesn't mean a red cent unless you can turn that against
10 somebody. That's the point. The government doesn't care about
11 your confession. The government doesn't care about that. They
12 care about what you have to say about somebody else. Help them
13 make new arrests, help them prosecute people, help them get
14 convictions. And so this calculation a cooperator makes is,
15 what can I say about others that helps me? How can I sink
16 others so that I can swim? And don't you think that lying goes
17 into that calculation? So frankly, as I just said, I feel that
18 you should not believe anything these cooperators say, frankly.
19 Just out of principle. They are so loathsome and have so
20 little regard for anything meaningful, such as life and truth,
21 just as a matter of principle, I think you should say: You
22 know what, I refuse to convict a young man of murder and of
23 these other serious charges based on nothing but these words of
24 cooperators. And you will hear the judge's instruction. He's
25 going to tell you that when you consider the testimony of

Cbrlmer2

Summation - Mr. Miedel

1 witnesses, you can choose whether to believe some of it or to
2 reject all of it if you don't believe some of it. Up to you.

3 And so I think that's what you should do. But just in
4 case you decide not to do that, at least at the beginning, let
5 me go on to the substantive acts that Earl Pierce is charged
6 with. Because if you look at those carefully, I believe you'll
7 reach the same conclusion, that the evidence doesn't exist, let
8 alone rise to proof beyond a reasonable doubt to prove that he
9 committed those crimes.

10 All right. As I mentioned to you at the beginning,
11 there are four basic categories, and I'm going to start with
12 the Correa murder. The question is whether the government has
13 proved to you beyond a reasonable doubt that Earl Pierce
14 murdered or aided and abetted the murder of Jason Correa, and
15 that sort of conduct covers a number of different charges.

16 I'm going to break my discussion of the Correa murder
17 into three parts: about what happened on Courtlandt Avenue
18 before the murder, about what happened inside the lobby of 681
19 Courtlandt Avenue, and then what happened after the murder.

20 So as I said to you earlier, the primary witness here
21 is Bernard Folks. And we've already talked about the more
22 general reasons why he should not be believed and why your
23 verdict shouldn't be based on someone like him, but let's get
24 into the specifics because the details -- the devil is in the
25 details, right, as they say. And you will see that the details

Cbrlmer2

Summation - Mr. Miedel

1 reveal that Bernard Folks is not telling the truth.

2 First, let's talk about this supposed -- supposed
3 motivation for the murder, this sort of conspiracy or whatever
4 that led up to the murder, this alleged agreement that the
5 government actually hasn't proved beyond a reasonable doubt.
6 Folks testified that he's hanging out on 155th Street with
7 T-Money. He remembers it's just the two of them. 155th and
8 Courtlandt. He remembers it's just the two of them, they're
9 together, hanging out, talking, being together. And he says
10 they're together for quite awhile. And I asked him, What does
11 awhile mean? He says, well, at least half a hour. I say, At
12 least half an hour? He said yes. That's his testimony; right?
13 He says that's where he was; he was hanging out with T-Money.

14 Now by the way, notably, that's not how Mr. Fee
15 described it yesterday. He said Bernard Folks was up and down
16 Courtlandt, in and out of the projects, doing his thing,
17 selling drugs. And why does he say that? That wasn't his
18 testimony. You see that. Why did he say that? Because he's
19 got a problem. The problem is the videotape, which I'm going
20 to show you in a minute. And so he tried -- he tried, Mr. Fee,
21 he tried to put a whitewash of, you know, figure out a way to
22 suggest that maybe Folks was just sort of around and not what
23 he said he was, which was on the corner of 155th and
24 Courtlandt.

25 Anyway, Folks says that he's hanging out with T-Money.

Cbrlmer2

Summation - Mr. Miedel

1 At some point Mr. Pierce comes up to him, and Pierce and
2 T-Money have some sort of conversation that he overhears a
3 little bit of, and I'll talk to you about that specific snippet
4 of conversation in a minute. And he says then shortly after
5 that -- right after that, actually, he says that Mr. Pierce
6 walked off, wandered off toward his building, 681 Courtlandt,
7 and right after that, T-Money says to him, Bernard Folks, "Come
8 on with me," and they head towards 681. Remember, that was
9 Bernard Folks' testimony. And that version of what he said,
10 that would be great; right? If it were true. If it had
11 happened like that. But it didn't.

12 How do we know that? Well, thank goodness we have the
13 videotape. Let's go to the videotape now.

14 This is a view from the camera at 155th Street
15 looking uptown toward 156th Street. And you note the time is
16 2041, which is military time for 8:41 p.m.

17 Okay. So let's play that.

18 (Video displayed)

19 MR. MIEDEL: Now see those two guys walking on the
20 sidewalk and -- okay, stop.

21 Those are Pemberton and Folks. That's what the
22 witnesses told us. Pemberton, Folks. And if we just sort of
23 back that up, we can see where they're coming from.

24 See, they're walking on the sidewalk, and they're
25 coming from -- see, they're coming from the corner, the corner

Cbrlmer2

Summation - Mr. Miedel

1 of 156th Street. They seem to be coming actually from west,
2 from Melrose or from the projects up there somewhere. Okay.
3 It's Pemberton and Folks walking together.

4 And let's go to the next one. Now this is a view --
5 same camera but facing into the projects at 155th Street, and
6 if we play that.

7 (Video displayed)

8 MR. MIEDEL: Here they are, the two of them, walking
9 together, just the two of them. Okay.

10 Now they're together, they're not with T-Money,
11 they're not with Earl Pierce, they're not with anyone else.
12 And that's, as you note the time, 2042.

13 All right. Let's go to the third camera view.

14 Now this is from the camera that's in front of 681
15 Courtlandt and it's looking up north, up Courtlandt Avenue.
16 And I'm just going to go back a couple of minutes. You see now
17 it's 2039. So it's about three minutes before we saw
18 Pemberton, Folks. And let's play that.

19 (Video displayed)

20 MR. MIEDEL: Now these two guys that are coming toward
21 us here, walking on the sidewalk, we know who they are. The
22 person in the front is Jason Correa and the person with him is
23 somebody else who Bernard Folks identified as Earl Pierce's
24 cousin.

25 Okay. And while I'm here, let me address something

Cbrlmer2

Summation - Mr. Miedel

1 that Mr. Fee said yesterday. He said repeatedly that Earl
2 Pierce's cousin brought Jason Correa into 681. An insinuation.
3 He didn't say what it meant or what he meant by that, just that
4 he brought him there. Let me be clear. There is not a shred
5 of evidence in this case that anyone brought Jason Correa to
6 the building. No one said it, and you know what, let's look --
7 we looked at the video. Does that look like Jason Correa is
8 being brought to 681? The two guys are slowly strolling on
9 Courtlandt Avenue, Jason Correa is ahead of this other person,
10 and they're walking into the building together slowly. Just
11 sort of forward that till they disappear.

12 Does that look like he's being brought? Looks like --
13 more like the other guy's being brought.

14 This sort of sense of, ooh, somebody brought him to
15 the building, almost suggesting like, oh, it was a plan, he
16 would be brought here. That's ridiculous. It may be wishful
17 thinking on the government's part, but there's no evidence, not
18 a shred of it, that supports that.

19 There was also some testimony, by the way, from Jason
20 Correa's mother about Jason Correa being scared to be on the
21 block, afraid of walking, afraid of 681 Courtlandt. Well, that
22 doesn't look like anybody's scared to be on Courtlandt. Slowly
23 strolling, he's on the phone, he's talking to people.
24 Certainly not scared to go into 681. So all I can say is,
25 thank goodness we have the video.

Cbrlmer2

Summation - Mr. Miedel

1 All right. Let's move forward a couple minutes,
2 couple minutes later to 2044 and play that.

3 (Video displayed)

4 MR. MIEDEL: By the way, this is now two minutes,
5 about, after we see Pemberton and Folks coming down from
6 156th Street. That person in the white T-shirt, that's Earl
7 Pierce, and if you look at -- if you look at the screen, or if
8 you look at this video in the deliberation room later, you'll
9 see he's drinking something as he's walking. Not sure that
10 looks like somebody who's about to commit a murder.

11 And if you keep playing it, the person walking in the
12 white T-shirt between the cars right now, heading towards the
13 sidewalk, that's been identified as T-Money, and then he's
14 being followed very closely by our friends Pemberton and Folks.
15 Pemberton and Folks still together; right? They were together
16 two minutes earlier, 2042 on the video, and this is now exactly
17 2045. They were together at 2042 coming from Jackson Houses
18 somewhere, they sort of disappear from camera view for about
19 two minutes, and then together again they walk into 681
20 Courtlandt.

21 Now the strange thing about this is, Folks has some
22 sort of amnesia about Pemberton. Folks claims he doesn't
23 remember Pemberton being there. Don't you think that's
24 strange? He testified that T-Money was only talking to him, he
25 doesn't remember Pemberton being there, I showed him the video,

Cbrlmer2

Summation - Mr. Miedel

1 he's like, oh, yeah, that's Pemberton. He's clearly with him.
2 They're clearly together. I mean, if anybody's together, it's
3 those two guys; right? So what's going on? He seems to have
4 mysteriously erased Pemberton from his story.

5 So, ladies and gentlemen, what are we left with here?
6 We're left with Folks' story about being with T-Money for half
7 an hour and just chilling and talking and Pierce coming up and
8 then T-Money following -- and then following T-Money into the
9 building. Well, that's just not true. We know it's not true
10 because it's two minutes where maybe a conversation could have
11 happened. How can you possibly trust Bernard Folks beyond a
12 reasonable doubt on that? And what can the government say?
13 Believe Folks? No, you've got to believe Folks. Don't believe
14 what's in front of you on the video.

15 Now this conversation, supposed conversation that
16 Folks remembers a couple years after the incident, I guess the
17 conversation that supposedly took place in those two minutes
18 that they were out of camera view. Now you've got a
19 conversation that is, for the government, the entire case, what
20 comes to the claim that Earl Pierce was somehow involved in the
21 aiding and preparation and participation of the murder of Jason
22 Correa.

23 So what does Earl Pierce, according to Bernard Folks,
24 actually say? He says: "Yes. Ski Box had told him, like, he
25 just said: My cousin wouldn't have let him live."

Cbrlmer2

Summation - Mr. Miedel

1 "My cousin wouldn't have let him live."

2 Okay. So the government's like, let me ask that
3 again. So we're onto the next page now, page 647. It says,
4 this time again: "It was just his words that, my cousin
5 wouldn't let him live."

6 "My cousin wouldn't let him live." What does that
7 mean? What is that supposed to mean? Is that supposed to have
8 some significance?

9 Well, apparently the government was troubled by that
10 too, because on redirect, they asked Bernard Folks about it
11 again. What happened this time? The answer was, to the
12 question of: "What words did he use?" He said, "They were,
13 let him live. He's with my cousin, let him live. My cousin's
14 with him, let him live."

15 Now that, ladies and gentlemen, is supposed to be the
16 hatching of a plan to kill him? That doesn't even make sense.
17 I mean, let's assume for a moment that they're actually talking
18 about Jason Correa, and we have no actual evidence of that
19 because Bernard Folks, he didn't know what was going on; right?
20 He testified that he had no clue what was supposed to happen.
21 But let's assume for a second, for the sake of argument, that
22 those words have something to do with Jason Correa. That's
23 supposed to be aiding and abetting in a murder? I mean, I'm
24 sorry, ladies and gentlemen. Are we living in some sort of
25 ultimate universe where "let him live" means "kill him"? That

Cbrlmer2

Summation - Mr. Miedel

1 doesn't make any sense.

2 One thing is certain. Those words do not prove
3 anything when it comes to showing beyond a reasonable doubt
4 that Earl Pierce was somehow involved in a conspiracy to murder
5 Jason Correa or aided in the murder of Jason Correa. To say
6 otherwise invites complete, utter speculation, and the judge is
7 going to warn you not to do that.

8 Of course the other thing is, somebody else was
9 present for this supposed conversation; right? Aubrey
10 Pemberton. So what does Aubrey Pemberton say about that? He
11 says something very different. He says: Okay, I was on
12 154th Street, not 155th Street, and I was there for hours
13 selling drugs, and I was with Crocker and Folks and T-Money and
14 Pierce was also there. He says that Levi walked up to the
15 group and that Levi said something about he's got money on him.
16 Remember that? So at that point he says that T-Money and
17 Pierce then walked towards 681 and go into 681 together and a
18 little while later he and Bernard Folks follow and go into the
19 building. Pemberton says he doesn't really know what's going
20 on but he thought maybe there was going to be a robbery, he
21 wanted to be part of it. Well, that is completely different,
22 right, than what Folks said. This isn't about Folks and
23 T-Money hanging out together, just the two of them, and Pierce
24 coming up. This is about a bunch of guys hanging out on
25 154th Street for hours, chilling out. How do you reconcile

Cbrlmer2

Summation - Mr. Miedel

1 that? And about Levi, who's not even on this video, coming up
2 to them to say something about a robbery, or about somebody
3 having some money on them. Someone is not telling the truth
4 here. They can't both be telling the truth. They can both be
5 lying.

6 And, you know, Mr. Fee gave us a little example
7 yesterday about why discrepancies between somebody's testimony
8 and somebody else's testimony shouldn't matter to you; right?
9 Because what matters is the big thing. He says remember the
10 day before the hurricane, the judge probably gave you the phone
11 number to take, and who was the court reporter? Right? And he
12 he's like, look, you're not going to remember that. Why would
13 anybody remember that? Really, you think that's an apt
14 comparison to what we're talking about here?

15 How about this? What if you were sitting here in the
16 jury box and you suddenly saw the court reporter get up and
17 shoot somebody, okay? I think you'd probably remember who it
18 was. You'd probably be able to remember which court reporter
19 did that.

20 We're not asking Bernard Folks and Pemberton, these
21 guys, to tell us, well, what was the color of the car that was
22 parked in front of 681 Courtlandt? We're asking them to be
23 truthful about important facts about a murder, and they're not
24 being truthful.

25 And of course what else is wrong with Pemberton's

Cbrlmer2

Summation - Mr. Miedel

1 story? Well, of course it's the video, right, which we just
2 saw a minute ago. And I invite you, when you go back to
3 deliberate, to look at these videos carefully. Pemberton
4 wasn't hanging out on 154th Street for hours. He was there
5 maybe two minutes. Because before that we saw that he'd come
6 from up by Jackson. And what about Levi? We don't see Levi
7 anywhere near the building until he comes out of the park about
8 ten minutes after the shooting, and we know that because one of
9 the witnesses identified him coming out of the park about ten
10 minutes later.

11 But most importantly, none of this, what Pemberton
12 said, proves anything about the conspiracy happening in
13 advance.

14 And briefly, ladies and gentlemen, Parsons, the third
15 person who testified about something that happened in advance.
16 And, well, of course, not surprisingly, he again tells a
17 completely different story, because he says he's on 153rd
18 Street, moving down the block. He says he's out there with
19 Bernard Folks, with T-Money, Pierce, Aubrey, and Levi, okay?
20 So, okay, in that sense he and Pemberton match up. He says he
21 sees Ski Box and T-Money talking, and then the two of them walk
22 into 681 together, and he says no one else walked into the
23 building. No one else. Well, we know that's not true. And
24 then he says he heard shots, and after he heard shots, he and
25 Levi went into the building together. We know that's not true

Cbrlmer2

Summation - Mr. Miedel

1 either, because he was identified walking into the building
2 about 20 minutes after the shooting, alone, on the video. So
3 once again, Mr. Parsons reveals himself not to only be a
4 sociopath but a pathological liar. And that's who the
5 government puts up here as their star witness.

6 All right. So that's the part that happened about --
7 on Courtlandt before the murder.

8 And what's the actual evidence? Three different
9 stories, all contradicting each other on important, important
10 facts, and all contradicted, all three of them, totally
11 contradicted by the video. So you might as well throw their
12 testimonies in the garbage because that's where they belong.

13 All right. Moving into the lobby, and inside the
14 lobby, unfortunately -- and I wish there were, but
15 unfortunately there is no video inside the lobby. Because if
16 we had one, I think we would know what really happened. So
17 we'll have to make do.

18 Folks says that he went into the lobby and T-Money and
19 Pierce were there, and he says he heard some things about
20 Pierce saying something about, "I'll wait for you on the second
21 or third floor." And he claims, by the way, it's only him --
22 only the three of them, T-Money, Pierce, and him. Once again,
23 omitting, obviously, Pemberton, who was with him. I'll get to
24 that in a moment.

25 But not at all what Pemberton says. Pemberton says

Cbrlmer2

Summation - Mr. Miedel

1 that -- he says -- remember, he says T-Money and Pierce go into
2 the lobby and he and Folks stay behind, and then he tells
3 Folks, "Let's go into the building." They go into the
4 building, and then they're all talking, all four of them --
5 T-Money, Pierce, Folks, and Pemberton. In fact, Pemberton
6 thinks it's going to be a robbery and he asks -- remember he
7 asks T-Money, "Let me do it," and he claims, right, at that
8 point that Pierce said no, something about, if you're so tough,
9 you do it. That's what he says. And then he says he leaves
10 the building and a while later he hears shots.

11 Now how can you possibly make sense of these two
12 versions in the lobby? Pemberton doesn't mention a word. Now
13 Pemberton says he's there and he doesn't mention a word about
14 Pierce supposedly saying, "Listen, I'll wait for you on the
15 second floor." Not there. He doesn't say it. He says
16 something totally different about this robbery thing; right?
17 So what do you make of that?

18 Oddly enough, by the way, if you look at the video,
19 you never see Pemberton leaving the building. There's
20 different videos and they cover the entrances, and if you watch
21 them over the course of time, he claims he leaves the building,
22 but there's no -- there's no evidence he leaves the building.
23 So what happens there?

24 I mean, look, the problem is, how can you trust really
25 any of these guys about what they're saying? They're wrong so

Cbrlmer2

Summation - Mr. Miedel

1 much of the time; right? They have such an incentive to lie.
2 And something I haven't even mentioned yet, they all were
3 basically high and drunk every hour of the day. They can't
4 even remember the season that things took place. Now -- but
5 even let's say for the sake of argument Pemberton is right
6 about what happened in the lobby; right? And I'm not saying
7 that's true because he was spectacularly wrong about what
8 happened beforehand, but let's say he's right. Even if he
9 says -- even if it's true, let's say, for example, Pierce said,
10 "You do it if you're so tough." How does that make Pierce a
11 murderer? How does it make him any different than Pemberton?
12 Pemberton actually wanted to do it. Pemberton doesn't --
13 Pemberton doesn't get charged with the murder. Yes, Pierce is
14 present in the lobby in this version. So was Pemberton. Mere
15 presence doesn't mean anything, and you're going to hear that
16 from the judge over and over again. Being merely present,
17 without more, doesn't mean anything. It's not a crime. Now it
18 may not be pretty, it may not be nice, but it's not guilt of
19 murder.

20 That brings us to the last piece of the Correa murder,
21 which, as the government claims, is the final nail in the
22 coffin. The passing, alleged passing of the gun from T-Money
23 to Pierce. And what's the evidence of that? Is there any
24 evidence of that beyond Folks? No. None whatsoever. I mean,
25 obviously we know they had other witnesses, and speaking of

Cbrlmer2

Summation - Mr. Miedel

1 which, ladies and gentlemen, it's in this little piece of it
2 that Folks seems to have slipped up a little bit. Because he
3 made a mistake. Folks claims, right, that the shooting took
4 place at the bottom of the stairs and right -- after the
5 shooting T-Money and him went upstairs to the second floor and
6 handed off the gun to Pierce. Now during cross-examination
7 Mr. Dinnerstein asked him:

8 The only person who knows who shot Correa who is
9 alive, that's you, right?

10 Me, and I don't know who T-Money told, so I'm not
11 sure.

12 The only person who knows who shot Correa is you.

13 And then he says, again, the only person who's alive
14 who was present when Correa was killed is you, isn't that
15 correct? The answer is yes.

16 Now why is that important? Under Folks' version,
17 Pierce wouldn't -- Pierce would know, right, that T-Money
18 was -- that T-Money shot Correa. He would have heard it if he
19 was on the stairwell, he would have felt the hot gun that was
20 just used in a shooting. Folks didn't mention Pierce. He
21 said, "Just me and T-Money. I'm the only person who knows."
22 If Folks' version were actually true, he wouldn't have left
23 Pierce out of that answer. But he did leave him out, and
24 that's how you know Folks is lying. Little things like that,
25 seemingly unimportant at the time, but when people lie, it's

Cbrlmer2

Summation - Mr. Miedel

1 precisely in those little details that they get caught up.

2 How else do we know that Folks is lying about this?

3 Well, remember Pemberton? He said that a couple days after the

4 murder he talked to T-Money, and T-Money told him about the

5 murder. He told him he shot the guy. And what else did he

6 tell him? He told him -- he told Pemberton that he, T-Money,

7 gave the gun to Folks and Folks took it out of the building.

8 Now why would T-Money lie about that? He admitted to killing

9 someone. Not only that, but he's talking to Aubrey Pemberton,

10 one of his closest friends, and not only one of his closest

11 friends but someone who quite literally saved his life just a

12 few days and weeks earlier when somebody tried to kill T-Money.

13 Why tell Pemberton that Folks brought up the gun if he didn't?

14 It makes no sense for him to lie under the circumstances. He

15 has no life sentence hanging over his head. But it does make

16 sense for Folks to lie about it, because he's stuck with a

17 murder rap and he's got to shift the blame away from himself;

18 right? T-Money's dead. Can't blame T-Money now. Nobody else

19 there, except for Pemberton, but for some reason that we don't

20 understand, he thinks that, you know, ignore the fact that

21 Pemberton is there. The only other person around is Pierce.

22 Remember I asked him a series of questions about this on

23 cross-examination and said: So you met with the prosecutors

24 and you told them that you didn't have anything to do with the

25 murder and you didn't know about it in advance and you didn't

Cbrlmer2

Summation - Mr. Miedel

1 know that T-Money had a gun; right? You told them all that and
2 they were still going to charge you with murder. That didn't
3 work. So he was left with only one course of action,
4 substantial assistance against someone else, and that someone
5 else was Pierce. Someone, by the way, ladies and gentlemen,
6 not in GFC, not in YG or OG or Mac Balla, not in Folks' gang,
7 someone he didn't care about.

8 That brings us to Maria Ortiz, who the government
9 claims is a big central witness against Earl Pierce. When you
10 look at her testimony carefully, and objectively, you'll see
11 that her testimony means absolutely nothing on its own. That
12 doesn't prove anything. That's the government's attempt to
13 insinuate, to make suggestions, to have you assume things
14 instead of offering actual evidence. And why do I say that?
15 Well, let's talk a little bit about Maria Ortiz. She said two
16 things that the government say is important.

17 One, she says -- first she says that she sees Pierce
18 coming into the apartment shortly after the shots are fired;
19 right? Obviously, of course.

20 Second, she claims that a couple of months later,
21 Mr. Pierce threatened to kill her if she told the police about
22 it. Well, let's go through each one in turn, because if you
23 look at this carefully, it's not really what it's made up to
24 be.

25 First she comes into the apartment shortly after the

Cbrlmer2

Summation - Mr. Miedel

1 shots are fired, and let me say that there are some -- let me
2 say -- before I go into that, let me say there's some problems
3 with Maria Ortiz; right? First of all, she clearly doesn't
4 like Earl Pierce.

5 (Continued on next page)

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CBR3MER3

Summation - Mr. Miedel

1 MR. MIEDEL: She mentions several times how she and
2 her sister Wendy fought about him, and that relationship,
3 Wendy's and Earl Pierce's relationship, caused problems in the
4 family.

5 Secondly, her memory is problematic. She doesn't
6 remember certain things she told the police. She doesn't
7 remember what people said after the shooting. She told
8 detectives one thing and told us another. And she conveniently
9 remembers only what she considers the bad stuff for Earl
10 Pierce.

11 Let's get specific. All right. So she sees him
12 coming into the apartment. Okay. So what? We know he's in
13 the building, we know he's around. Okay. But does she see or
14 feel or hear anything suspicious? Of course the answer is no.
15 Remember such a funny little detail, she says she actually
16 patted him down when he came into the hallway. Did she feel a
17 gun? Does she see a gun? Does she see anything that makes her
18 think, hmm, what's going on there? No.

19 She sees him walk into Wendy's room, ask Wendy if she
20 wanted to eat. Mr. Fee makes a big deal about that. He says,
21 look, is that the behavior of somebody who just heard shots?
22 Maybe. Maybe it is the behavior of somebody who hears shots
23 all the time in the Melrose Houses. But the more important
24 question is, is that the behavior of somebody who just
25 committed a murder?

CBR3MER3

Summation - Mr. Miedel

1 And he doesn't go in the closet and stash something in
2 the closet. He doesn't go in the bed and put something under
3 the bed, right. And suddenly everyone realizes that Wendy's
4 little nephew is outside, Justin, so she sends her brother
5 Chuckie and Pierce out to go get him. If you look at the
6 video, and I don't have to time to show it to you now, but
7 you'll see Pierce and Chuckie coming out and grabbing the
8 little kid.

9 Without Folks' testimony Maria Ortiz's story would be
10 totally innocuous. Innocent. Yes, Pierce is around. He's
11 present near the scene of a murder. Well, so are other people.
12 So is Pemberton. Parsons. But you will hear it again. Mere
13 presence, merely being present, that's not enough for anything.

14 The second issue, ladies and gentlemen, is this
15 supposed threat that's made a couple of months later.
16 Government makes a big deal of that. Why would Pierce threaten
17 Maria Ortiz if he didn't have anything to hide? Again, we've
18 got the government asking you to make assumptions or inferences
19 that are not supported by the evidence.

20 Let's take a careful look at what she actually said.
21 What she actually did. She said she got into an argument.
22 Okay. An argument. And she got into an argument because,
23 remember, she said Wendy -- she got into an argument because
24 Earl was upset because Wendy had told him that Maria was going
25 to the cops and blaming him or putting him somehow into this

CBR3MER3

Summation - Mr. Miedel

1 murder. And he gets into an argument with her and he says, as
2 he told her, he was like, he doesn't have anything to do with
3 anything. He didn't know what I'm talking about. Given that,
4 wouldn't that be pretty upsetting, pretty maddening, to have
5 your girlfriend's sister wrongly telling the police that you
6 had something to do with a murder? So he gets mad and they
7 have heated words. She claims he threatened to beat her up or
8 kill her.

9 Well, who knows what was actually said. But let's
10 think about what she actually did in response. Not much. She
11 said afterwards, we had conversations after that. And more
12 importantly, she stays in the apartment for another few months.
13 She's afraid? She thinks that this is serious or that she's
14 scared of him or something like that? Of course not. She
15 stays in the apartment for months until she finally ends up
16 moving to Pennsylvania a few months later. Not exactly the
17 action of someone who is afraid of Earl Pierce.

18 What we have is an argument about being falsely
19 accused. And that's it. What does it mean? A whole lot of
20 nothing. And I urge you to look at this carefully.

21 Anybody else talk about this? Well, this Anthony
22 Crocker, Anthony Crocker said that he heard about the Correa
23 murder and heard that T-Money killed Correa alone. No one else
24 was with him. He also testified that after everyone is
25 arrested, right, he said Pierce told him that after T-Money

CBR3MER3

Summation - Mr. Miedel

1 killed Correa, T-Money ran into Pierce's apartment with the
2 gun. Now that's different than what Mr. Fee said yesterday
3 because Mr. Fee said that Pierce told him that he, Pierce, got
4 the gun from T-Money and put it in his apartment. Suggesting
5 that Crocker was corroborating Bernard Folks. That's not what
6 he said. Let's look at the -- oh we don't have it. We don't
7 have it so we will -- oh, right, I'm going to read it to you.
8 It's from page 3987.

9 "Q. What, if anything, did Ski Box say about what T-Money did
10 after shooting Jason?

11 "A. He ran to his apartment.

12 "Q. To whose apartment?

13 "A. To Ski Box.

14 "Q. Did Ski Box say what happened at his apartment after
15 T-Money shot Jason?

16 "A. That he left a gun there. That's about it.

17 "Q. Who left a gun?

18 "A. T-Money.

19 "Q. T-Money left a gun where?

20 "A. At Ski Box's apartment."

21 Now, that is very different than what Folks testified
22 to. Right. On the one hand we have Pierce supposedly waiting
23 for the murder to be finished, taking the gun and running into
24 his apartment and stashing it. And the other one is Pierce is
25 in his apartment and T-Money comes running in and says, yo,

CBR3MER3

Summation - Mr. Miedel

1 hide the gun for me. Of course, Crocker's story here is also
2 different from Maria Ortiz who didn't testify about T-Money
3 coming to the apartment, so we have all different versions.

4 Lastly we have Maurice Hagen, our jailhouse informant.
5 What does he say about the Correa murder? He says Mr. Pierce
6 came back from court after being newly charged with this
7 murder, and very upset, he felt wronged, he felt it was unfair
8 he was being charged with a murder he didn't commit. He was
9 upset because he says the only thing he did was get rid of the
10 gun. That's what Hagen's testimony is.

11 First of all, of course, going back to the question
12 is, you know, should we trust Hagen? We already talked about
13 the general reasons he should not be believed. He has nothing
14 to lose and everything to gain from, quote, air hustling his
15 way onto the Courtlandt Avenue case, right. He's clever, he's
16 smart. He knows what he has to do. Not only that, his story
17 is once again contradicted by some of the other people.

18 And for sake of argument, let's just assume it's true.
19 And believe me, I'm only saying it for the sake of argument.
20 But what does getting rid of a gun mean? When? How? That
21 could mean days later. That could mean T-Money told his friend
22 Pierce this gun is hot, can you hide it for me. Now, that's
23 not good. That's probably a crime. But it's not aiding and
24 abetting in a murder.

25 Ladies and gentlemen, what Earl Pierce is charged with

CBR3MER3

Summation - Mr. Miedel

1 is aiding and abetting in the murder, and the government has to
2 prove that beyond a reasonable doubt. You cannot aid a murder
3 after it happens. That's something else. So, I implore you,
4 please listen to the jury instructions on this very carefully.
5 If the government didn't prove that Mr. Pierce somehow
6 participated in the murder before it happened, counseling,
7 helping, opportuning, whatever it is the language is that
8 you'll hear, then he's not guilty.

9 Even if, even if -- I'm playing devil's advocate --
10 even if he got rid of the gun after the murder, he's not guilty
11 if he didn't do anything to help with the murder before it
12 happened. All right.

13 That's the so-called evidence on the Correa murder.
14 Mr. Fee said the evidence was overwhelming, and I suppose if
15 you believe every word that Bernard Folks said, ignore
16 conveniently what Aubrey Pemberton and others said, ignore the
17 videotape, well, I grant him, perhaps he would be right.
18 But if you do your job, ladies and gentlemen, which is to
19 analyze the evidence carefully, compare the witnesses, compare
20 what they say to each other and to the videotape, and also
21 think about what's not there. And it should be quite clear
22 that Earl Pierce did not participate in the murder of Jason
23 Correa and he should be found not guilty.

24 And as I said, the Correa murder is charged across
25 various different counts. So if you find the government has

CBR3MER3

Summation - Mr. Miedel

1 not proved beyond any reasonable doubt that Mr. Pierce is
2 guilty of agreeing to participate in this murder, and actually
3 aiding and abetting it, then you must find him not guilty of
4 count three, conspiracy to murder in aid of racketeering; count
5 four, murder in aid of racketeering; count 14, murder in
6 connection with the drug crime; count 17, use of a firearm
7 during a crime of violence. All right. I know I don't have
8 too much more time so let me move on.

9 The Tarean Joseph shooting on the night of
10 September 13, 2010. Once again, Bernard Folks is in the middle
11 of this with a little backup support from Devin Parsons and
12 Anthony Crocker. And again, Crocker comes in to clean up the
13 mess that's left by the contradicting evidence by the other
14 people by claiming that Pierce confessed to him while in jail.
15 And again, we lack any objective, hard, unassailable evidence.

16 All right. So the first version comes from Folks. By
17 the way, let me say at the outset, when Folks started to
18 cooperate, he knew that Pierce was charged with this shooting.
19 And he knew what he had to do because he knew he was there.
20 And he had to put somebody else in it. And he had to provide
21 substantial assistance against someone else. It couldn't just
22 be him. Notice once again a non-GFC member takes the hit.
23 Right.

24 Folks said, oh, I didn't really do anything. I barely
25 knew what was going on and I just shot at the end. And Killa,

CBR3MER3

Summation - Mr. Miedel

1 he didn't really do anything either. But Pierce, Pierce
2 supposedly acts crazy and shoots Tarean Joseph in the head. So
3 this is what Folks said happened.

4 He said that he is at Dante's apartment with Devin
5 Parsons, they're hanging out. And in fact he's sleeping or
6 lying down. And he gets a call from Meregildo asking him to
7 bring down the .40 caliber gun. So he puts it in a shoebox and
8 he and Devin Parsons go downstairs. He tries to give the bag
9 with the shoebox to Meregildo, Meregildo won't take it. At
10 this point he says Devin Parsons leaves and goes home. He says
11 that Folks -- that he and Meregildo then walk back into the
12 building, they ditch the sneaker box, and he puts the gun in
13 his waistband. Now, he says he has no idea what's going on.
14 He has no idea what is happening or what if anything is
15 supposed to be happening, and he doesn't think much it because
16 he walks around with guns in his waistband all the time.

17 Then they go out of the building, and Meregildo takes
18 him to a cab parked out front with Pierce in it, and they drive
19 to Harlem. They supposedly talk to -- well, Meregildo
20 supposedly talks to T-Money's uncle. They get another cab and
21 they drive home, and Folks says I just thought I was going
22 home. I live at 321. And they see some people sitting on
23 benches, and at that point, you know, all hell breaks loose.
24 But he makes clear there was no plan to shoot or kill anyone.
25 He was just going along for a ride.

CBR3MER3

Summation - Mr. Miedel

1 Even if that was true for a second. Where is the
2 evidence that this was part of a racketeering enterprise?
3 Where is the conspiracy? If anything, this seems like some
4 sort of spontaneous act of maybe personal revenge or something.
5 That's if it were true, but it's not.

6 And once again, Devin Parsons' version is totally
7 different. He says that Pierce called him, not Meregildo. He
8 says that he got the call while he was in his own house, not in
9 Dante Barber's house. He says he goes downstairs, walks along
10 the path towards Dante Barber's house when he encounters Folks
11 on the pathway, and they both go up to Barber's house to get
12 the gun.

13 Odd. That seems totally different than Folks who says
14 he's sleeping at Dante Barber's house.

15 They get the gun, he says they grab the gun, and they
16 go downstairs. He gives the gun to Folks. And he puts -- he
17 sees Pierce and Meregildo in the cab. And then he, Devin
18 Parsons went home. This is important. He says about five to
19 seven minutes after he leaves these guys in the cab he hears
20 the shots.

21 Well, they can't both be right about that. Because
22 one guy says he drives to Harlem and back. And Devin Parsons
23 says there's shots five to seven minutes after he leaves them.
24 How are we supposed to know who is telling the truth, if
25 anyone?

CBR3MER3

Summation - Mr. Miedel

1 So where does this leave us about this shooting? How
2 can we trust beyond a reasonable doubt what happened here?
3 Well, ladies and gentlemen, what do we know? We know there was
4 a shooting, okay, because we know that there were shells
5 recovered at the scene. All right. Fine. We know that a guy
6 named Tarean Joseph was shot. Now, did the government really
7 manage to connect Tarean Joseph to this shooting? I'm not sure
8 they did, but let's say it was him. Tarean Joseph got shot.
9 Of course, he would be in the best position to tell us what
10 happened, right. But you know he didn't testify. Still, we
11 get a clue as to what he might have said about this from his
12 medical records which are in evidence as Government's Exhibit
13 420. This is what he told his doctors. He was just walking
14 down the street and got shot. Then, he also says he does not
15 know what happened.

16 According to Folks, Earl Pierce shoots Tarean Joseph
17 face to face. Joseph tells his doctors he doesn't know what
18 happened.

19 Where does that leave us? Well, again, we lack any
20 kind of objective evidence in the case. We don't have any
21 video, we don't have any physical evidence. A gun was
22 recovered, but there is no DNA or fingerprints or anything that
23 links it to anyone.

24 And by the way, let me just say something about that
25 gun, because there is something strange about this whole gun

CBR3MER3

Summation - Mr. Miedel

1 case in this incident. Folks testified that he had a .40
2 caliber, remember, and he says that Pierce had a 9-millimeter
3 gun. And he says that after the shooting, they both ran away
4 and they both threw their guns into the same garbage can.
5 That's at page 690. He says Ski Box threw his gun in the same
6 garbage can.

7 So, what happened to that 9-millimeter? I mean, we
8 know somebody called 911, and said there is a guy who just
9 threw a gun in a garbage can, and soon the cops are swarming
10 the garbage can. And they ultimately find a gun. One gun.
11 The .40 caliber. And remember Folks says he tried to get
12 somebody, a friend of his, I think it was Javon Jones, to try
13 to retrieve the gun from the garbage can. And Jones said it's
14 too hot around here, there's too many cops around here, can't
15 do it. So what happened to that supposed phantom 9-millimeter?
16 Are we certain there were two guns? Detective Fox testified
17 that a 9-millimeter ammunition can be used in a .40 caliber
18 gun. We know also that one of these guys at 321 started
19 shooting back. We don't know what kind of gun he had. Makes
20 you wonder.

21 So, in the end, the only evidence against Earl Pierce
22 on that shooting comes from two completely untrustworthy people
23 who contradict each other. In fact, it's really just one,
24 because Parsons doesn't even claim to have seen what happened.

25 And the government brings in Anthony Crocker who says,

CBR3MER3

Summation - Mr. Miedel

1 oh, by the way, Pierce told me he did it while we were locked
2 up together. How convenient is that. Unfortunately for the
3 government, there is a problem with Crocker's testimony.
4 Because the way Crocker tells it, Pierce said that he did the
5 shooting with the .40 caliber and then that he handed it off to
6 Folks. That's on page 4011 to 4013 if you want to check that.
7 That story completely contradicts what Folks said, who said he
8 had the .40 and Pierce had the 9-millimeter.

9 So, once again, the two central witnesses against Earl
10 Pierce on this matter completely contradict each other. So
11 what are you left with? You are left with the sense of I don't
12 really know what happened here. If you're left with that
13 sense, you have more than a reasonable doubt. And you must
14 vote not guilty.

15 I'm getting close. Narcotics conspiracy. What is the
16 evidence that Earl Pierce sold drugs? That he sold narcotics,
17 that he sold crack? And that's only the first step of course,
18 because the real question is what is the evidence that he sold
19 crack with his co-defendants as part of a conspiracy that have
20 a joint goal? That's the charge in this case. That they
21 conspired to sell drugs together, and by together it means that
22 they shared profits, they shared suppliers or worked together
23 in some way towards the same goal.

24 So let's start again with Bernard Folks. He said he
25 was out there on the street. He was selling crack for T-Money

CBR3MER3

Summation - Mr. Miedel

1 every day, or he's selling drugs for T-Money every day. He saw
2 Pemberton selling out there. He saw Parsons selling out there,
3 and he says he saw Pierce selling crack on Courtlandt Avenue.
4 Remember the government tried to get him to say so you were
5 selling with Pierce. Right? You were selling together? And
6 he wouldn't bite. He said, essentially what he said was, well,
7 we were standing on the same street at the same time selling
8 drugs, but we weren't working together. That's what he told me
9 too. And he said when I questioned him about it, we didn't
10 share product or profits. I didn't work for him.

11 Is that a conspiracy? Folks and the others claimed
12 that GFC members worked for T-Money, right. That they got
13 their drugs from him, that they sold drugs for him, that they
14 kept 40 percent of the profits. Nobody said they worked for
15 Pierce. They didn't share profits with Pierce. They didn't
16 share product with Pierce. He didn't give them drugs to sell
17 and split the proceeds. Mr. Fee seemed to pull out of thin air
18 this notion that the GFC guys were the foot soldiers for the
19 older guys and that they got direction from the older guys.
20 Really? Is there any evidence at all of that in this case?

21 No one took direction from Earl Pierce. Where is the
22 evidence that Earl Pierce is intimately involved in the drug
23 dealing enterprise?

24 And that doesn't even get us to the question of
25 whether Folks is telling the truth that Pierce was actually out

CBR3MER3

Summation - Mr. Miedel

1 there selling crack. First of all, does that even make sense?
2 P.S.A. 7 is right around the block. 200 officers are
3 patrolling this area. Officers like the one who arrested
4 Hassen Brito, who set up observation points to look out for
5 people, right. You heard that people got arrested for drugs.
6 Parsons got arrested for selling drugs, Crocker got arrested
7 for selling drugs, Villafranco got arrested for selling drugs
8 all during the summer of 2010. Did you hear anyone say a word
9 about Pierce getting arrested, charged, convicted, anything for
10 the possession or sale of drugs in 2010, 2011, when he was
11 supposedly out there selling the stuff every single day? No?
12 No. Why? Because he wasn't.

13 Of course as I mentioned before, the government has
14 not shown you a single bag of crack or marijuana or whatever
15 that's somehow linked to Earl Pierce.

16 Second, we talked about all this overwhelming evidence
17 against Earl Pierce on the drug conspiracy. Mr. Fee seems to
18 have conveniently forgotten the testimony of Aubrey Pemberton.
19 Pemberton said he was literally out on Courtlandt Avenue every
20 single day selling drugs for T-Money, and he talked about all
21 the other people who were also out on Courtlandt. And he says
22 that he never saw Earl Pierce selling drugs during the summer
23 of 2010.

24 2010 you saw him with T-Money, but you didn't see him
25 selling crack? Answer: Correct.

CBR3MER3

Summation - Mr. Miedel

1 He's out there every day, but he never sees Pierce
2 selling. Pemberton said, and this is from pages 1840 to 1842.
3 I don't expect you to read through this whole thing, but
4 basically he says that -- confirms once again that Earl Pierce
5 was not part of GFC or OGFC or Mac Balla, that he didn't
6 resupply any of them, that he didn't pay Pemberton or that he
7 saw anyone else paid by Pierce to sell drugs or commit crimes,
8 and he never saw him give anyone a gun. That he never saw
9 Pierce go to a drug supplier. He was very adamant about that.

10 What else was he adamant about? He was very adamant
11 about the fact that he never saw Pierce and T-Money selling
12 drugs together. Never saw them together to get a new supply of
13 drugs or marijuana, crack. Never saw them collect money
14 together. He's out there every single day. He is a big-time
15 GFC guy. He doesn't see any of that.

16 What do the other people say? The other cooperators
17 say various things. Parsons says Pierce sold on the street and
18 on two occasions somebody told Parsons to give the proceeds to
19 Pierce, but totally out of step with everybody else. And
20 frankly, at this point I would hope that for all the reasons I
21 pointed out earlier, you simply take his testimony and throw it
22 into a mental trash can.

23 Who else? Villafranco. Well, Villafranco says Pierce
24 was selling on Courtlandt Avenue. But he admitted that he
25 never saw or heard of Pierce giving drugs to any of the young

CBR3MER3

Summation - Mr. Miedel

1 dudes that he talked about. Taking money, giving money,
2 anything that would suggest that he was in some way in a
3 conspiracy with them.

4 What about Anthony Crocker? Anthony Crocker was
5 T-Money's number one dealer, right. He was, I mean, if anyone
6 sold a ton of drugs, it was Anthony Crocker, according to him.
7 And he probably had the best view of all who was doing what on
8 Courtlandt Avenue during the summer of 2010. So what did he
9 say about Pierce and drugs? He said Pierce did not sell for
10 T-Money. That's what he said. Yes, he sold on Courtlandt, but
11 did he not sell for T-Money. That's on page 4326 of the
12 transcript. Crocker was close to T-Money. He cried when
13 T-Money died. If anyone would have known if Pierce was
14 involved with T-Money's drug enterprise, it would have been
15 Crocker, and Crocker was clear. Pierce did not sell for or
16 with T-Money.

17 Remember Crocker also told us a little story about how
18 one time 12, one of the GFC kids, got cut off by T-Money
19 because he owed him money, so T-Money refused to give 12 any
20 more drugs to sell. And so what happened? According to
21 Crocker, 12 goes to Pierce and says can I get drugs from you?
22 So, according to Crocker, Pierce gives 12 drugs. And what does
23 that show you? It shows that, if anything, Pierce was selling
24 for himself. That he was doing his own thing. That he didn't
25 care about what T-Money's business was about. T-Money

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Summation - Mr. Miedel

1 disciplining his workers and whatever. He couldn't care less,
2 because that was not his thing. He was not in T-Money's band.

3 Finally, Maria Ortiz claimed that she saw Pierce going
4 out and selling drugs, I guess and at one time he was with
5 T-Money. Even if that were true, where is the evidence that
6 this constitutes a joint conspiracy? You can have two friends,
7 right, who sell drugs independently of each other. Pierce for
8 himself, T-Money for himself with the aid of the GFC kids.
9 Hanging out together. That doesn't mean they are in the same
10 conspiracy.

11 To riff off Mr. Fee's jazz band example, what if you
12 have two bands playing at the same venue, one after the other.
13 And the two drummers from the two bands get together afterwards
14 for a drink and share stories. Does that mean they are in the
15 same band? No. Pierce was not in T-Money's band.

16 Now, in order to prove count 13, which is the
17 narcotics conspiracy, the government must prove that Earl
18 Pierce was a member of the charged conspiracy. Not of a
19 different conspiracy. Not a conspiracy for himself with
20 whoever his supplier was. Not a conspiracy with 12 for that
21 little interaction that they had. But the charged conspiracy.
22 And the judge will instruct you on that, and I want you to
23 listen really carefully to his charge on what is called single
24 and multiple conspiracies. Because he's going to tell you that
25 if you find that Earl Pierce sold drugs but not as part of the

CBR3MER3

Summation - Mr. Miedel

1 GFC group conspiracy, charged conspiracy, if you think that he
2 was part of a different conspiracy, but not the charged one,
3 you must find him not guilty. Listen to that instruction very
4 carefully. All right.

5 Finally, briefly, the racketeering. And the facts
6 here are very closely connected to the narcotics conspiracy so
7 I won't belabor it. But, in this entire case, witness after
8 witness testified about GFC, OGFC. Cooperator after cooperator
9 talked about those gangs and talked about their tattoos, as
10 I've mentioned. They talk about the stuff they did together,
11 the going down to Maria Lopez and shooting people, right. That
12 was all part of what it meant for them to be part of this gang.
13 This criminal enterprise. Then they talked about T-Money and
14 they said, remember, that T-Money got out of jail and this is a
15 guy they got to know who was selling drugs and he convinced
16 them to sell for him, take 40-60 splits on the drugs that they
17 sold, get the product from him, sell it and then split the
18 proceeds. That's what they all talked about.

19 Where was Earl Pierce in all of this? He wasn't in
20 GFC. We've talked about he didn't have tattoos. He didn't
21 have T-Money's name inked all over his body. And did you
22 notice that Earl Pierce was curiously absent from Mr. Fee's
23 narrative about what happened after September of 2010. Even
24 though this supposed enterprise took place for another year,
25 supposedly. Where was Earl Pierce?

CBR3MER3

Summation - Mr. Miedel

1 In terms of the guns that were supposedly part of this
2 enterprise, Villafranco testified that no one besides Tay and
3 13 held guns for T-Money. Obviously he didn't consider Pierce
4 as somebody who had anything to do with T-Money's guns.

5 Speaking of guns, Mr. Fee said over and over
6 Mr. Pierce's .380. This was Mr. Pierce's .380. This is
7 Pierce's .380. As if it was some sort of gospel, some sort of
8 fact. What is the evidence of that? This is what we know
9 about the .380. The silver and black .380. We know it was
10 used in the Correa murder apparently by T-Money. We know it
11 was used in the Ogarro murder, supposedly by Meregildo. We
12 know it was found in Hassen Brito's apartment. Is it found on
13 Earl Pierce? Is it found in his apartment? Is his DNA on it?
14 It's great that Detective Fox linked this gun to different
15 things, but how does it connect to Earl Pierce? All we really
16 know about this gun is that it was apparently touched by GFC
17 people. Pierce wasn't GFC.

18 So, take Mr. Fee's "this was Pierce's gun" as what it
19 is. Argument, without evidence to back it up.

20 By the way, Villafranco testified that he once saw
21 Pierce with a .380. What did he say about it? It was small
22 and black. Certainly doesn't describe the gun that the
23 government waved around. That's on page 3506.

24 Finally, in terms of the racketeering enterprise, let
25 me just talk about Crocker. Anthony Crocker. Because I think

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Summation - Mr. Miedel

1 he summed it up best in his testimony and let's take a look at
2 that:

3 "Q. And the racketeering enterprise that you pled guilty
4 stretched from 2010 to September '11.

5 "A. Yes, right.

6 "Q. The racketeering enterprise was OGFC, right?

7 "A. Right." Then there are a number of questions after that.
8 And then you get to:

9 "Q. It was through your participation in the enterprise of
10 OGFC that you sold crack and marijuana?

11 "A. Yes.

12 "Q. It was through your enterprise of OGFC that you shot at
13 Maria Lopez?

14 "A. Yes.

15 "Q. And Earl Pierce wasn't OGFC and he wasn't GFC and he
16 wasn't Mac Balla, and he never gave you drugs, he never took
17 money from you and he didn't sell drugs for T-Money."

18 And that's supposed to be proof that Earl Pierce is
19 part of this racketeering enterprise?

20 Look at what happened after T-Money died. Did Pierce
21 take over this business of his good friend? Did GFC members
22 come to him to buy drugs? Did he supply others with drugs and
23 take a split like T-Money did? Did he participate in any of
24 the beefs with YG at Maria Lopez? Was he in charge of
25 anything?

CBR3MER3

Summation - Mr. Miedel

1 You remember what Parsons said? He said he wasn't
2 planning to participate in any kind of shooting or anything
3 like that because the guy that paid him was no longer around,
4 he was dead. He didn't say Pierce was going to pay him. Or
5 Pierce was going to say, listen, you do what you have to do.
6 It didn't even cross his mind. Why? Because Pierce was never
7 part of any racketeering enterprise.

8 What has the government tried to do. It has tried to
9 somehow find a way to put Earl Pierce in this. It's tried to
10 broaden, expand this racketeering enterprise beyond what is
11 really charged. The trial testimony simply has not backed up
12 the government's efforts.

13 Bringing Earl Pierce into this case was misguided to
14 begin with. Because he was never part of any racketeering
15 enterprise. If you agree, as I think you should after you look
16 at this evidence carefully, it should be clear that Earl Pierce
17 should be found not guilty of count one and count two
18 racketeering and racketeering conspiracy.

19 All right. In closing, I just want to add a few more
20 thoughts.

21 THE COURT: Mr. Miedel, you should begin to conclude
22 your summation.

23 MR. MIEDEL: Yes.

24 I've spent a lot of time talking about cooperators.
25 And that's because that's the only evidence that there is in

CBR3MER3

Summation - Mr. Miedel

1 this case against Earl Pierce. And in the end you have to ask
2 yourselves, can you trust these people? The judge is going to
3 define reasonable doubt for you. In his jury instruction he's
4 going to define reasonable doubt. And one way it will be
5 defined is a reasonable doubt is a doubt that would cause a
6 prudent person to hesitate to act in a matter of importance in
7 his or her own affairs.

8 So the question for you is this: Would you hesitate
9 to act in an important matter even if Bernard Folks or Aubrey
10 Pemberton or Devin Parsons or Anthony Crocker told you it was
11 okay? If they said trust me, leave your valuables with me,
12 they will be there when you come home. Would you trust them?
13 If they said we'll babysit your children. Don't worry. They
14 will be fine. Would you trust them?

15 Well, here you have another person's life in your
16 hands. Literally. Your decision determines the rest of Earl
17 Pierce's life. Can you trust, can you really trust these
18 people on a decision as important and as fundamental as this?

19 Look, I'm sure you're thinking to yourselves the
20 government presented seven weeks' worth of testimony in this
21 case. Exhibits, guns, drugs. It's got to be worth something,
22 right? You ask yourself, if Earl Pierce wasn't involved in all
23 of this, why is he sitting there? Well, there are lots of
24 answers to that question. Most beginning with the idea of
25 presence. Mere presence. He was present. He was around. He

CBR3MER3

Summation - Mr. Miedel

1 grew up on Courtlandt Avenue. He was there. But as I said to
2 you before, merely present, being present is not a crime.
3 Knowing about crimes being committed is not a crime.

4 The government here made assumptions, right. They
5 jumped to conclusions. They grabbed everybody and put them
6 together into something and they tried to fit a square peg into
7 a round hole. And the evidence in the end, the evidence
8 against Earl Pierce was weak. Yes, there was seven weeks of
9 testimony, but it's not the quantity of the evidence, it's the
10 quality of the evidence that matters.

11 In this sense, evidence is like coffee, right. If you
12 add weak coffee to weak coffee, it's still weak coffee. It
13 doesn't get stronger just because you keep adding weak coffee.
14 The evidence here remains and was and remains weak. And the
15 government has not proven Earl Pierce's guilt by competent
16 evidence beyond any reasonable doubt. And therefore, ladies
17 and gentlemen, I'm hopeful and confident that you will do the
18 right thing in this case and find him not guilty of the 11
19 counts that he's charged with.

20 Now, I'm going to sit down now. But I want to leave
21 you with one last thought. Mr. Mysliwiec and I have lived and
22 breathed this case for months. And we have carried what is an
23 awesome responsibility on our shoulders. The responsibility
24 for another human being's life and future and freedom. And
25 now, we have to relinquish that responsibility. We have to

CBR3MER3

Summation - Mr. Miedel

1 hand it over to you. And all I ask of you, please, be careful
2 with it. Thank you.

3 THE COURT: Members of the jury, we're going to take
4 our luncheon recess at this time. Lunches are again waiting
5 for you in the jury room. We're going to reconvene at
6 1 o'clock and continue with closing arguments. At that time
7 you'll hear from Mr. Becker, then we'll take a short recess and
8 then you will hear from Ms. Heller, because the government is
9 entitled to a rebuttal since the burden is always on the
10 government and never on a defendant to prove guilt by competent
11 evidence beyond a reasonable doubt.

12 Keep an open mind. Don't discuss the case during the
13 luncheon recess. And we'll see you in about 45 minutes.
14 Please recess the jury.

15 (Jury excused)

16 THE COURT: Are there any issues that counsel wish to
17 raise? Anything from the government?

18 MR. FEE: No, your Honor.

19 THE COURT: All right. Any issues with respect to
20 demonstratives or aids?

21 MR. BECKER: I'm going to be doing an old-fashioned
22 summation. I don't expect to have demonstratives.

23 MR. FEE: I'm excited. But we're going to hand out
24 Ms. Heller's, she has a couple of slides that are
25 demonstratives and -- just one, I'm sorry. We'll hand them out

CBR3MER3

1 right now.

2 THE COURT: All right. Very well. The defendants may
3 be escorted from the courtroom at this time. Be ready to go at
4 1 o'clock. Have a good lunch.

5 MR. FEE: Thank you, your Honor.

6 (Recess)

7 (Continued on next page)

Cbrlmer4

Summation - Mr. Becker

AFTERNOON SESSION

1:07 p.m.

(In open court; jury present)

THE COURT: Good afternoon, members of the jury. We'll continue now with the closing arguments. At this time, members of the jury, I ask that you give your undivided attention to Gary Becker, Esq., as he delivers his closing argument on behalf of the defendant Nolbert Miranda.

MR. BECKER: Thank you, Judge Pauley.

Good afternoon, everyone.

I've done this before, but I still get nervous every time I do, and I guess I always will.

As a criminal defense lawyer, people will sometimes say to me, in social settings, "I have a question." They say, "How do you represent somebody when you know they're guilty? What do you do?" And that's a very common question, and I finally figured out the answer. The answer is, what's really tough is when you represent somebody who you believe is not guilty. And I think that's why I'm so nervous, because I think that if there's one thing the evidence in this case has made clear, and the lack of evidence, is that whatever Nolbert Miranda may have done, or didn't do, he didn't conspire to sell drugs with the other three gentlemen who are charged in this case; he didn't conspire to do that with T-Money, or any conspiracy or agreement with the Courtlandt Avenue Crew, as the

Cbrlmer4

Summation - Mr. Becker

1 government has dubbed it; he didn't agree or conspire to
2 violate the RICO statute by engaging in a pattern of
3 racketeering; and he didn't use or possess a firearm in
4 connection with the charged drug conspiracy. Those are the
5 three charges against him. And given all the evidence in this
6 case, and again, the lack of evidence, I respectfully submit
7 that the conclusion should be clear to you by now that
8 Mr. Miranda is not guilty of those charges.

9 Now just start by considering this. A number of
10 lawyers have said, we've been here eight weeks, and there were
11 times, of course, when we were on break, but there's been a lot
12 of witnesses and a lot of testimony and a lot of evidence. Can
13 any of you recall a speck of evidence that Nolbert Miranda ever
14 so much as met Joshua Meregildo, let alone made some agreement
15 with him to do something illegal? I will tell you, I searched
16 the record and I didn't see it. It's possible I missed it.
17 But if it was there, boy, oh, boy, it came and went.

18 Is there any evidence before you that Mr. Miranda made
19 any kind of criminal agreement or entered into some criminal
20 conspiracy with Melvin Colon? I don't think there's any
21 evidence in the record they've ever met.

22 There is some evidence in the record that Mr. Miranda
23 knew Earl Pierce and that they may have been friends, and
24 that's it, about Earl Pierce and Mr. Miranda. I think Mr. Fee
25 said to you yesterday that there was evidence that Mr. Miranda

Cbrlmer4

Summation - Mr. Becker

1 and Mr. Pierce did things unlawfully. The only evidence, I
2 believe, when you search the record, there's some testimony in
3 the case that there was a time when Mr. Miranda came over to --
4 to the apartment where Earl Pierce was and Mr. Miranda
5 allegedly sat down by himself, counted some money, and then
6 went out and said, I'm going out to do a deal, and the witness
7 was asked -- and this was not a cooperating witness, this was
8 one of the civilian witnesses. The witness was asked, was he
9 going out to do this deal by himself or with somebody? And she
10 said, no, by himself.

11 We have all been here a long time, and I know that the
12 people in the well of the courtroom are exhausted, and the
13 fact, though, is that Mr. Miranda has waited a long time to get
14 to this point, a long time to finally have you, the jury, be
15 the judge of his case, for him to be judged not by the
16 prosecutors, not by the Alcohol, Tobacco, and Firearms agents
17 in the back of the courtroom, not by anyone but by you, the
18 jury. And other lawyers have spoken about how important the
19 jury is in this society, in this case. It is one of the most
20 cherished institutions our country has ever had. I've never
21 had the privilege to serve on a jury. I've always wanted to.
22 But it goes back to the founding of our nation, and it holds a
23 very significant historical place in our nation. Sometimes
24 friends will say to me -- I'll get a call, they'll say, "Gary,
25 I got a call for jury service. I'd like to get out. What do

Cbrlmer4

Summation - Mr. Becker

1 you suggest I do?" And boy, oh, boy, do they hear it from me
2 when they say that, because I say to them, "Shame on you.
3 Shame on you, wanting to get out of jury service." It's the
4 highest calling that you can aspire to as a citizen. And if a
5 loved one of yours, god forbid, was ever charged with a crime,
6 if you were accused by your government of committing a crime,
7 how would you feel if people's attitudes were, oh, I don't want
8 to serve on the jury?

9 And I know that I speak for everyone in this case when
10 I thank you and tell you how much we admire how conscientious
11 and responsible you have been. Judge Pauley's told you more
12 than once that you are a remarkable jury, and you are. A lot
13 of us suffered hardship from Hurricane Sandy, and there were
14 delays, and you folks have been unwavering in your attention to
15 this case, and I've watched you, and I have seen the care with
16 which you've considered the witnesses.

17 The last thing I want to say about your role as
18 jurors, Judge Pauley told you yesterday that after I finish
19 speaking that the government -- and I believe it will be
20 Ms. Heller -- will have the opportunity to speak with you, and
21 she will, and he said that she will get the last word. He
22 meant that figuratively, but in reality it's not quite accurate
23 that the government will get the last word. You will get the
24 last word. This case will soon be in your hands, and when it's
25 in your hands, the 12 of you are going to come together and

Cbrlmer4

Summation - Mr. Becker

1 you're going to figure out whether or not the government has
2 met its burden, and you're going to do so without interference
3 from anyone. It's your decision. It is an awesome
4 responsibility to sit in judgment of someone else. And I
5 cannot tell you the admiration I have for the approach that you
6 have taken to this case.

7 Now several of the lawyers before me commented about
8 their view that your task here is extremely difficult. And I
9 understood why anyone would say that. Respectfully, when it
10 comes to the case of Nolbert Miranda, I don't really -- I don't
11 think your task is that difficult. I think it's pretty
12 straightforward. I don't think it's that complicated.
13 Yesterday Mr. Fee stood up and he began his summation by
14 talking about promises that the lawyers had made in opening
15 statements, and he suggested that the promises that were made
16 by the lawyers -- and he was talking about the defense
17 lawyers -- were not kept, and it's almost kind of like a
18 politician running for office and he makes promises, and then
19 you keep your fingers crossed and you vote and then you wait
20 and see what the evidence is and you hope you made the right
21 choice. A jury trial is a little different. Here you get to
22 see the evidence before you vote. And so I welcome, and I
23 welcomed, Mr. Fee's invitation to you to consider the promises
24 that the defense lawyers made in this case, and I'd like to --
25 I think it's been since about October 2nd or 3rd or 4th,

Cbrlmer4

Summation - Mr. Becker

1 some time since I last spoke to you personally. I'd like to
2 remind you, if I could, what I believe were the promises that I
3 made to you when I stood before you seven or eight weeks ago.

4 I told you that Mr. Miranda was charged in just three
5 of the 22 counts of the indictment. And you've come to see
6 that he is.

7 I told you that his name does not appear on the
8 indictment in any kind of substantive way until page 14.

9 I told you that when the government brought these
10 charges, they got it all wrong, that despite all the bluster of
11 the government's opening statement that Mr. Miranda and these
12 other defendants terrorized the neighborhood in which they
13 lived -- and that was the word that the government chose -- I
14 suggested to you that there was not a single allegation in this
15 case, let alone any evidence, that Mr. Miranda ever engaged in
16 a single act of violence towards anyone. That's what I told
17 you. And I would like to think -- I believe I'm right -- that
18 the evidence has borne that out. Mr. Miranda is not charged in
19 this case with a single act of violence, and witness after
20 witness acknowledged on the witness stand that they had never
21 known Mr. Miranda to point a gun at another human being or to
22 engage in a single act of violence against anyone.

23 I told you -- I believe I promised you the evidence
24 would show that Mr. Miranda was not a member of any gang, or
25 any criminal enterprise, and lord knows we've heard a lot of

Cbrlmer4

Summation - Mr. Becker

1 evidence about gangs in this case. It took me about a month to
2 get all the initials straight. I think I finally understand
3 them. But the one thing that I know for sure is that you have
4 not heard a speck of evidence from anyone that Mr. Miranda was
5 a member of any gang. And while Mr. Fee I think tried to
6 downplay the significance of that, what we know is that the
7 genesis of this case, according to the government's witnesses,
8 including I believe Agent Castillo, was that there came a time
9 when a man named T-Money, Terry Harrison, came out of prison,
10 and he recruited people to sell drugs for him, and they were by
11 and large GFC people.

12 Now I think there's been some evidence they weren't
13 all GFC people, but you know what occurred to me over this
14 weekend when I spent Thanksgiving thinking about this case was,
15 if you take a look at the witnesses and the testimony, I think
16 you will see that without exception, they're all Bloods.
17 T-Money was a Blood, Parsons was a Blood, and I'll go through
18 this in a little bit more detail. And Bloods are a gang,
19 serious gang. Not only are they a gang of Bloods, but they're
20 a set called Mac Ballas. The Mac Ballas. And I was trying to
21 think, what connects the witnesses in this case, and those are
22 the parties who are really guilty of being in this enterprise.
23 I was trying to find a common link, a common thread. And with
24 a possible exception here -- but I don't think so -- I think
25 you'll find they were Bloods and that that's what this case

Cbrlmer4

Summation - Mr. Becker

1 was, it was a Bloods case. And of course Mr. Miranda, no
2 evidence he's a Blood or GFC or OGFC or YG or any other gang
3 whatsoever.

4 Now I also told you in my opening statement -- and I
5 didn't run from what I thought you would hear -- that you would
6 hear testimony that Mr. Miranda at times sold small quantities
7 of drugs on the street. I told you that. And I told you that
8 he was doing that in his own capacity, on his own. And I told
9 you that I thought the evidence would bear that out. And this
10 is also very different because most of us might think, well,
11 wait a minute, if a defense lawyer stands up in court and says
12 to the jury, you're going to hear evidence that his client sold
13 drugs, what kind of defense lawyer is that? I mean, you know,
14 crazy, right? No. Because as I believe Mr. Miedel said and
15 other lawyers, the charge in this case against Mr. Miranda is
16 not that he sold drugs in or about Courtlandt Avenue. That's
17 not the charge. The charge is that he conspired with T-Money
18 and T-Money's crew to do that, to work toward a common purpose,
19 a common goal, and the common goal, I think the overwhelming
20 evidence has shown, that the people who were part of this
21 conspiracy was to sell T-Money's drugs, make money for
22 themselves and enrich T-Money. And so unless you satisfy
23 yourselves that the government has proven to you beyond a
24 reasonable doubt that Mr. Miranda was part of that conspiracy,
25 then your oath requires you to find him not guilty of the drug

Cbrlmer4

Summation - Mr. Becker

1 conspiracy charge.

2 Mr. Miedel made note of this. When Judge Pauley gives
3 you his charge in this case, maybe later today or certainly, if
4 not today, tomorrow, he will tell you about something called
5 single conspiracy versus multiple conspiracy charge.

6 Essentially what that says is that in order to convict any of
7 these defendants, there has to be proof not that they did
8 something wrong, not that they even did something unlawful, not
9 that they sold drugs, but that they were guilty of the charges
10 in the indictment, which are very specific, and so I beg you
11 not to lose sight of that.

12 Now I also told you in my opening statement that by
13 and large the cooperators in this case were going to be people
14 who -- I think I used an expression you'll want to have to take
15 a shower after you hear them. And I got to tell you, the
16 depravity and the grotesqueness, if that's a word, of some of
17 these witnesses stunned even me. I ask you if you will for a
18 moment to try to put aside the majesty of this courtroom, the
19 beautiful courtroom with I guess walnut and the marble that's
20 in the corridors and the American flag and the judge and the
21 well-dressed lawyers. I ask you to put aside that when you
22 consider these witnesses, these cooperators. Because you saw
23 them in the setting that I just described. You saw them up
24 there on the stand having been prepared, I think Devin Parsons
25 said two years. He was prepared for two years. He was

Cbrlmer4

Summation - Mr. Becker

1 coached, in a sense, to tell the truth. I don't know how many
2 of you have ever needed a coach to tell the truth. But every
3 witness told you how much they met with the government to get
4 them ready. Devin Parsons said it was to make him presentable.
5 Those were his words, to make him presentable. He said he was
6 a wild man when he was on the street.

7 But my point is this: When you think about whether
8 these people are trustworthy, it's fair for you to say to
9 yourselves, in my mind's eye, think about them not sitting
10 there but let me think about them as I'm walking down the
11 street of New York City and a guy like Devin Parsons approaches
12 me, or Bernard Folks or Aubrey Pemberton or the others. Am I
13 going to be one of their next victims? One of their -- I think
14 he said 500, he committed 500 robberies. Is one of these guys
15 carrying a shank in a sock that I should be on the lookout for?
16 You know, do they have a gun? Am I going to be the next victim
17 that they're going to maybe laugh about, like Aubrey Pemberton
18 made a sick joke after he shot the Chinese delivery man, said,
19 "I guess these people won't get their Chinese food?" The point
20 is not that they're bad people, although lord knows they're bad
21 people. The point, as Mr. Miedel said, are these people
22 trustworthy? Would you let them -- would you trust them to
23 walk your dog? Would you trust them with anything? If you
24 came to court this morning, as you always do, and by some
25 chance you were coming into the courthouse and who was coming

Cbrlmer4

Summation - Mr. Becker

1 out but any one of these cooperators, and they recognized you
2 being on the jury and they said to you, "Oh, hey, I know you're
3 sitting in the trial with Judge Pauley's courtroom. The reason
4 I'm leaving is because it turns out there's no trial today.
5 Court got put off today, you have to come back tomorrow,
6 Wednesday. You don't have to come back today. You can go
7 home." Would any of you turn on your heel and go home? Is
8 there a chance on this earth --

9 MS. HELLER: Objection, your Honor.

10 THE COURT: Overruled.

11 MR. BECKER: Is there a chance on this earth that any
12 of you would turn and say, "Oh, well, Devin Parsons told me
13 there's no trial so I can go home"? No. You know what you
14 would do. You'd say, "I'd better call Mr. Gosnell. I'd better
15 e-mail the judge's deputy. I'd better check out about this."
16 You would hesitate. This is an important affair in your life.
17 You've made that clear. You would hesitate. And that's what a
18 reasonable doubt is -- when you hesitate before you act on a
19 matter of importance.

20 You need one reasonable doubt. That's all you need to
21 acquit Mr. Miranda. This case is filled with doubt.

22 So let's talk about now what the evidence in this case
23 has shown and what it has not shown with respect to
24 Mr. Miranda. And I have -- I think there are certain themes
25 that I saw develop in this case, which I hope maybe you can

Cbrlmer4

Summation - Mr. Becker

1 keep in mind as I go through some of this. And I'm not going
2 to do a particularly exhaustive recounting because you heard
3 the evidence just like I did, and the 12 of you collectively
4 have better recollection and more intelligence than anybody
5 here, so I'm going to try to give you some of the highlights.
6 But some of the themes were as follows, as I see it: The
7 government -- well, let me back up a bit.

8 We're not cooking spaghetti here. This is not a case
9 where -- a situation where you throw something against the wall
10 and hopefully something sticks and you say, aha, aha. So, you
11 know, if on one occasion one witness says that he heard T-Money
12 say to Nolbert Miranda, "Let's get a hundred grams," and
13 Nolbert Miranda doesn't say anything, which is what the
14 transcript will tell you, he didn't say anything, the
15 government says, aha, they were buying crack together.
16 Spaghetti on the wall. So that's one theme.

17 Another theme is how I think you'll see that
18 witnesses, even when they're telling the truth, will embellish
19 and exaggerate, thinking about what they should say. A witness
20 who says, "I was fifteen hours a day, seven days a week,
21 selling drugs," I'm sorry, do these people strike you as these
22 conscientious people who get up in the morning and, first
23 thing, I got to go to work? "I saw PayDay on the street every
24 single day from 2009 till 2011," one witness said. "I saw him
25 every day from 2009 to 2011," until I point out and he

Cbrlmer4

Summation - Mr. Becker

1 acknowledges that on September 11th, 2010, Mr. Miranda was
2 shot, almost died, you heard, and that he never really saw him
3 again after that. So it went from, "I saw him every day from
4 2009 to 2011," to, "Well, I guess it was September 2010." To a
5 witness saying, "Yeah, we were all hanging out on the street
6 and we were selling drugs together," and then the government
7 puts up a so-called video, which is proof of their selling
8 drugs together, and Mr. Miranda is doing chin-ups or pull-ups.
9 And by the way, that is the only evidence, in terms of
10 photographs, videos, documentary evidence, that was collected
11 as part of the investigation in this case that has Mr. Miranda.
12 I'll have more to say about that.

13 So let me talk first about a -- a little bit about
14 what there's no evidence about, because as Judge Pauley will
15 tell you, the lack of evidence is just as significant as
16 evidence in determining whether there's reasonable doubt.

17 When you think about a gigantic drug conspiracy case,
18 investigated by federal agencies and the New York City Police
19 Department, you know the resources that were brought to bear on
20 this case, gigantic resources. They brought in FBI agents,
21 they flew in someone from Facebook, from California, they do
22 whatever they can.

23 And Agent Castillo and others told you that the
24 conspirators in this case kept in touch with one another. They
25 kept in touch with one another through a variety of means. One

Cbrlmer4

Summation - Mr. Becker

1 was on the telephone. They would text messages and they would
2 call each other. The government put on an expert witness who
3 drew that very impressive analysis where he showed you how cell
4 sites overlapped and intertwined and interlocked. And they
5 talked about how cooperators -- excuse me -- conspirators
6 conferred that way. Did you hear one mention of a single phone
7 call, ever, in that testimony involving Mr. Miranda? There's
8 not any evidence in this record that the government collected
9 showing a phone call or a text message to or from Nolbert
10 Miranda from anybody charged in this case, and Agent Castillo
11 candidly acknowledged when she testified that the government
12 had no evidence that Mr. Miranda ever even had a phone.

13 Facebook. A lot of Facebook postings. Postings,
14 people saying things, people putting up photos with guns and
15 carrying on, rowdy, sworn affidavits in this case from federal
16 agents in support of warrants that the targets of this
17 investigation were believed to be using Facebook to communicate
18 with each other, to tell each other where drugs were kept, to
19 tell each other where each person was. Witness after witness
20 told you, never communicated with Mr. Miranda on Facebook.
21 Agent Castillo confirmed, government has no evidence
22 Mr. Miranda ever communicated with anybody on Facebook. Didn't
23 have a Facebook account. No evidence of it.

24 The government put into evidence directories, phone
25 directories, seized from people. I believe they did it from

Cbrlmer4

Summation - Mr. Becker

1 Mr. Colon, I believe Mr. Meregildo as well, where they showed
2 with one -- I think it was Dev Parsons, 23 names of people he
3 was in touch with, many of whom were identified as GFC members
4 and his co-conspirators. You didn't see Mr. Miranda's name in
5 a single document in this case from -- that was uncovered as
6 part of that investigation. No drug records, no ledgers,
7 nothing. No photographs of him pointing fingers, doing
8 anything that he shouldn't be doing. Only -- only image, in
9 fact the government put up yesterday, was him doing pull-ups,
10 because maybe, you know, he doesn't belong to a health club so
11 he does pull-ups to try to get some exercise. But they
12 captured it on videotape and they go, "There it is."

13 I'll tell you one -- couple of photos they did show.
14 You know the only photos in this case of Mr. Miranda that they
15 showed you? Photos that they took of him after he was
16 arrested. Remember? Got a tattoo, it says PayDay. He's got
17 another tattoo. So what did they do? Oh, and also face plate
18 number 4, number 4, Mr. Miranda, put him up. That's what they
19 did. They arrest him, they generate evidence and take
20 photographs of him, then they introduce the photos and they go,
21 aha, evidence, and they point to it and they have witnesses
22 point to it. That's -- that's what they have.

23 So who are these cooperators? Let's talk a little bit
24 about them and what they had to say. And I want to say this as
25 well. Very important. Mr. Fee said yesterday that the defense

Cbrlmer4

Summation - Mr. Becker

1 lawyers in this case have no choice but to call the cooperators
2 liars. That's what he said. You'll see, they have no choice
3 but to call them liars. That's all they can do. Well, another
4 thing that makes this case so unusual for Mr. Miranda is that
5 whether you choose to believe these witnesses or disbelieve
6 them, or believe some and not believe something else, guess
7 what? Either way, either way, he's not guilty.

8 Why is that? Well, if you don't believe them and you
9 think they're all scoundrels and, you know, should get what's
10 coming to them, then obviously you're not going to find that
11 the government's met its burden.

12 But let's assume that you believe much of what they
13 had to say. Did they tell you that Mr. Miranda was in a
14 conspiracy with T-Money and Melly to sell drugs? Did they tell
15 you that Mr. Miranda shared profits with T-Money and got drugs
16 with T-Money? Did they tell you that? No. And they also
17 didn't tell you, as Mr. Fee suggested to you yesterday, that
18 Mr. Miranda provided them with drugs to keep the operation
19 humming along. No, what they told -- and I'll get to that.
20 What they told you, witness after witness, was that, yeah, it
21 looked to us like Miranda, Mr. Miranda was out on the street
22 selling, they really couldn't place a time. The summer of 2010
23 was the number one hit in this case. How many times in this
24 case did you hear summer of 2010? I think part of the mantra,
25 the sort of code, was that when in doubt, you say summer of

Cbrlmer4

Summation - Mr. Becker

1 2010. But Mr. Miranda was identified as being out on the
2 street in the summer of 2010, selling drugs, and witness after
3 witness told you that as far as he could see, Mr. Miranda was
4 working for himself, was on his own. Exactly as I had told you
5 in my opening.

6 So Bernard Folks. Bernard Folks. I'll try to be
7 concise, if I can. He told you that he sold for T-Money, that
8 he had an arrangement with him, that he would get drugs from
9 T-Money, he would sell, and he would keep some of the money and
10 give it back to T-Money. He told you that he never got a
11 single bag of drugs from Mr. Miranda. He asked Mr. Miranda for
12 drugs and Mr. Miranda refused. So if Mr. Miranda is somehow
13 part of the engine here that is supplying drugs, why would it
14 be that Mr. Folks, who was, you know, a number one seller,
15 never got any drugs from Mr. Miranda? Well, the reason is, is
16 because, as he said -- and I believe this is at page 1099:

17 Was it your understanding that PayDay was on his own?

18 A. Yes.

19 That he wasn't working with anybody.

20 Nah, not to my knowledge.

21 Mr. Folks told the government -- gave the government a
22 list of people who he understood, both from talking to them and
23 from his own observations, worked for or with T-Money. And
24 those persons included Dev Parsons, Hump, 12, 13, Pemberton,
25 and others, but not Mr. Miranda.

Cbrlmer4

Summation - Mr. Becker

1 Now the government tried to kind of blur the lines
2 here a little bit by saying:

3 Well, when you were out on the street selling, did you
4 see Mr. Miranda selling?

5 Yes.

6 Were you guys sort of together, close to each other?

7 Yes.

8 Suggesting, oh, that that must have meant that they
9 were working together.

10 And what did he say to you?

11 No, we sold on the street, but that was as if we were
12 standing -- we were standing around at the same time.

13 So remember, ladies and gentlemen, you're not guilty
14 of a conspiracy charged in this case because you might have
15 been in or around Courtlandt Avenue selling drugs. And just
16 like I'm kind of with you right now in the sense that I'm a few
17 feet away from you, you're serving your function and I'm
18 serving mine. And it's not a joint enterprise of any kind, as
19 they were suggesting.

20 So, I don't know. The government put on Bernard
21 Folks. Bernard Folks said that as far as he could see,
22 Mr. Miranda worked for himself, didn't have anything going --
23 he never saw him give drugs to anybody, he said, who he
24 conspired with. That's a reasonable doubt. That's a
25 reasonable doubt right there, one witness. If you believe

Cbrlmer4

Summation - Mr. Becker

1 Mr. Folks, as the government wants you to, then that's a
2 reasonable doubt.

3 What did Pemberton tell you? Pemberton told you that
4 he also got crack from T-Money, that T-Money would give him
5 certain number of bags at certain, you know -- at a time, he
6 would sell them, he would give T-Money back \$180 and he would
7 keep \$120. It was an arrangement. It was an agreement. That
8 was the conspiracy. The conspiracy that witness after witness
9 testified to was that T-Money provided the drugs on
10 consignment. Every single time it was consignment. That is,
11 here's the drugs, you go sell them, you give me back
12 60 percent, you keep 40 percent, or whatever the percentage
13 was. That was the arrangement and everybody knew about it.

14 And Aubrey Pemberton was also asked about
15 Mr. Miranda's involvement or lack of involvement in that
16 agreement, in that conspiracy, and what did he say? He was
17 asked:

18 Who got money -- who got crack from T-Money?

19 This is at page 1310, page 1310.

20 All of us except PayDay got our crack from T-Money.

21 All of us except PayDay got our crack from T-Money.

22 That's what the charged conspiracy is about. It's about those
23 people getting crack from T-Money and to enrich T-Money and
24 themselves.

25 And then further on he's asked:

Cbrlmer4

Summation - Mr. Becker

1 He wasn't getting crack from T-Money, right?

2 Right.

3 He wasn't supplying crack to T-Money, right?

4 Right.

5 I believe this is at 2020 and 2021.

6 You don't know where he was getting the crack that you
7 say you saw him selling, right?

8 No.

9 You never saw him give T-Money any money from the
10 sales of crack that you say you saw him selling, right?

11 No.

12 You never saw T-Money giving Mr. Miranda any money to
13 buy crack.

14 No.

15 And in fact, in all the time you were out on
16 Courtlandt Avenue, you only saw Mr. Miranda and T-Money
17 together or in close proximity a couple of times, right?

18 Right.

19 And you didn't have any knowledge and you still don't
20 have any knowledge that Mr. Miranda was working for T-Money or
21 anyone else, right?

22 Correct.

23 And as far as you knew, he was on his own? Right --
24 on his own, question mark.

25 A. Correct.

Cbrlmer4

Summation - Mr. Becker

1 As far as you knew, he worked for himself on his own.

2 Correct.

3 And Mr. Pemberton told you something else very
4 significant. He told you that T-Money had a rule, and the rule
5 was, you can only sell for me. That is, we have an
6 arrangement. We have a criminal agreement. I'm going to
7 supply you with drugs on a contingent basis and you are going
8 to sell them, and we're going to both profit. I don't want you
9 getting drugs from somebody else and selling them. And there
10 was some evidence that T-Money learned that it was reported to
11 him that Pemberton may have gotten money -- drugs from T-Money
12 [sic], and Pemberton told you that if he ever got drugs from
13 anyone other than T-Money, he would not tell T-Money. That was
14 something he would keep from him. So if there's any truth to
15 the allegation -- and I submit there's not, but if there's any
16 truth to the allegation that Mr. Miranda ever did a double-up
17 and did a favor for Aubrey Pemberton and gave him 20 bags of
18 crack for a hundred dollars rather than \$200, that was not
19 something that T-Money was in on, it was not something he was
20 aware of, it was not something he agreed to, and in fact, it's
21 something he opposed and got mad about when he found out.

22 Devin Parsons. He met for two years with the
23 government. They tried to make him presentable. And they did
24 a yeoman's effort. They made a yeoman's effort. But my, oh,
25 my. A man who blurted out how he liked being the center of

Cbrlmer4

Summation - Mr. Becker

1 attention and, you know, I'm not a psychiatrist and I don't
2 know if any of you are, but I don't know if that contributed to
3 his reign of terror, and let there be no mistake, he's a
4 terrorist. He told you he spent his life terrorizing people.
5 That's what he does, terrorize. But here's something that I
6 think really is all you need to know about him. Whatever he
7 did or didn't do, he told you that when he got up in the
8 morning, he would start smoking marijuana, start drinking
9 Hennessey, start taking ecstasy pills, get so drunk that he
10 couldn't walk straight, so stoned, so affected by the ecstasy
11 that it affected his ability to remember things and he couldn't
12 walk straight. So this is the witness that the government
13 brings to you, a man like that. Now there is sort of a maxim
14 of the law that the government takes their witnesses as they
15 find them, and I think the judge may tell you that. And that's
16 generally true. And what that means is, the government can't
17 pull the pope from the Vatican City to give testimony. They
18 take their witnesses as they find them. That doesn't mean that
19 they have to put on any and every witness that comes their way
20 who might say things that supports their case. They didn't
21 have to put on Dev Parsons. They could have said: No, you've
22 gone too far. You have forfeited your right to assist the
23 United States government in the prosecution of American
24 citizens who are presumed innocent. You have forfeited your
25 rights to participate in that.

CBR3MER5

Summation - Mr. Becker

1 MR. BECKER: By your reprehensible acts. But, the
2 government, they want to win. They want to win. They want to
3 win. And they were willing to work with him to overlook his
4 crimes, to overlook his lies. Every time they met with him for
5 two years they said have you told us about all the guns, have
6 you told us about all the guns? Yes, I've told you about all
7 the guns. Remember, if you lie to us, we rip up the agreement.
8 And then a few days before he gave testimony in this case, they
9 said, you know, you didn't tell us about a shotgun that you
10 had. Oh yeah, I forgot.

11 Did they rip up his agreement? Did they rip up his
12 agreement when he sent Facebook postings? Did they rip up his
13 agreement when he smoked pot in jail? You are going to decide,
14 you are going to decide what that cooperation agreement means.
15 You've heard a lot about it.

16 Carlos Villafranco, he met with the government many
17 times. They asked him to list the names of every person he
18 knew or believed worked for or with T-Money selling drugs. He
19 listed a bunch of names, including Aubrey Pemberton, Capo, Dev,
20 Akon, 12, 13, Monster, 14, Tosh, Hump, Levi, Young Mel, Pookie
21 Dante, I think he may have listed another defendant in this
22 case. But did he not name Nolbert Miranda.

23 "Q. They wanted to know all the people you knew who worked
24 with T-Money, right?

25 "A. Right.

CBR3MER5

Summation - Mr. Becker

1 "Q. You certainly didn't say, PayDay?

2 "A. Right."

3 He told you, this is in 3757, he has no knowledge
4 where Mr. Miranda got his drugs from. Whether or not he was
5 sharing profits with anybody. He certainly didn't know about
6 Mr. Miranda ever getting drugs from anyone in GFC. No
7 knowledge that Mr. Miranda ever gave money to anyone in GFC.
8 Or anyone hanging out and chilling on the block, as he put it.

9 So, does the evidence so far, does it sound like the
10 evidence supports Mr. Fee's claim yesterday that the evidence
11 in this case showed you that Mr. Miranda gave GFC people and
12 crew members drugs to keep the operation humming along?
13 Humming along. Pemberton did say that on four or five
14 occasions I believe he said Mr. Miranda, quote, did him a
15 favor. There are no witnesses to that. We have nothing but
16 Pemberton's word. He can say anything.

17 But, let's just assume for argument's sake that that
18 happened. And I'm not suggesting it did, and I don't think you
19 have proof beyond a reasonable doubt because a man like Aubrey
20 Pemberton says it. But, assume just for the moment that it's
21 true. So, if he gave him 20 bags four or five times as a
22 favor, it was clearly done behind T-Money's back. It was so
23 that Pemberton could put some money in his own pocket. Money
24 that he would either keep for himself or spend. Not money that
25 went to T-Money as T-Money wanted. He was double crossing

CBR3MER5

Summation - Mr. Becker

1 T-Money. That's not guilt of this conspiracy. That might be,
2 it might be, a separate multiple conspiracy between Mr. Miranda
3 and Mr. Pemberton, assuming it happened. But that's a separate
4 conspiracy from the one that's charged in this case.

5 But let's assume it's true. So he gave him 20 bags
6 four or five times. Let's make it five times. That's a
7 hundred bags. If each bag contained approximately .05 grams of
8 crack, which is consistent with some testimony you heard in
9 this case, that would be 5 grams. 100 times .05 is 5 grams.
10 That kept this 24 hour a day seven days a week enterprise
11 humming? 5 grams. 5 grams. 28.5 grams is an ounce. It's a
12 sixth of an ounce. It was incidental. It wasn't this
13 conspiracy.

14 Same with Mr. Villafranco -- excuse me, Mr. Crocker
15 who I'll get to in a minute, who I think also said that as
16 T-Money laid dead on the street and there is a phalanx of
17 police officers and the neighborhood's blocked off and there is
18 30 cops and a crowd and because, after all, T-Money has been
19 shot, I think he says he also got drugs from Mr. Miranda that
20 day. And also if proven, and I suggest it wasn't, was
21 something between him and Miranda. He told you that, and I'll
22 get to that in a minute, and that was also maybe a couple of
23 grams.

24 So, Crocker told you that he also gave the government
25 information about people who sold for T-Money. And he said

CBR3MER5

Summation - Mr. Becker

1 that they had an arrangement with T-Money, again, a percentage
2 arrangement. By the way, he said that it would be crazy to
3 just stand on Courtlandt Avenue on the sidewalk in broad
4 daylight selling drugs. Do you remember what every witness in
5 this case, it was their mantra: Yes, I was out on Courtlandt
6 selling. As Mr. Miedel said, you have P.S.A. 7 a block away.
7 You have pole cameras on Courtlandt Avenue and they are just
8 standing around selling. It's embellishment, it's exaggeration
9 to say this was going on like an open street bazaar.

10 But in any event, he acknowledged he never saw
11 Mr. Miranda and T-Money and anybody else within 2 or 3 feet of
12 each other selling drugs together. He told you, Mr. Crocker
13 did, that he saw Mr. Miranda sell drugs and the bags were
14 yellow. Yellow. And I think we have other testimony in this
15 case about the bags being yellow. That's significant. Because
16 as we know, there is evidence in this case, testimony, that the
17 drugs that Mr. Harrison sold, that is T-Money, his people, they
18 were clear, or they were clear with a logo on them, I think it
19 was a dollar sign. Clear, clear with a logo. And I think it's
20 reasonable for you to conclude that people who worked together,
21 sell the same product, and they package it the same way. And
22 T-Money's people generally packaged it that way. We have
23 evidence that to the extent people saw Mr. Miranda selling
24 crack, the bags were yellow.

25 That's the evidence, pretty much, about Mr. Miranda

CBR3MER5

Summation - Mr. Becker

1 and drugs and what these cooperators told you. I think in
2 summary, what I've hopefully just conveyed is that to a man,
3 they told you that as best they can see he was working on his
4 own. Most of them said they never got drugs from him. Two of
5 them said on rare occasions they did. But you know, they
6 talked amongst themselves, everybody knew who was selling. How
7 else would they be able to get on the stand and say this one
8 sold, this one sold, this one sold, this one sold.

9 If what Mr. Miranda may have done with two of these
10 witnesses, I guess it's Pemberton and Crocker, if that was part
11 of this conspiracy, wouldn't everybody know it? Wouldn't it be
12 going on in a more widespread way? How many people were in
13 GFC? How many people worked for T-Money? Was it 20, was it
14 30? This was isolated. Isolated occurrences at best.

15 There's other ways that you know that Mr. Miranda was
16 not part of this drug conspiracy, and one of them that you
17 heard a fair amount of evidence about was he was always getting
18 shot. Do you remember Bernard Folks, he was always getting
19 shot. We know he was shot on September 11, 2010. His aunt
20 Lillian Miranda Konate came in and took the stand and told you
21 how he was living with her at that time, and she heard gunshots
22 and she came out and he was lying there in a pool of blood and
23 she called the ambulance and he was taken away. I believe
24 Crocker was said that he heard that Miranda almost died from
25 that attack.

CBR3MER5

Summation - Mr. Becker

1 He was shot in 2009, but here's why it's significant.
2 Here's why it's significant that he was shot multiple
3 occasions. First of all, the conspiracy in this case is from I
4 guess the spring of 2010 until September of 2011. Mr. Miranda
5 was shot on September 11, 2010, and there is not a shred of
6 evidence in this case that he ever again was seen on the street
7 selling drugs to anyone. His aunt testified that she told him
8 get out of the neighborhood, I'm afraid they are going to come
9 and kill you.

10 And what Folks acknowledged, and I believe this is
11 page 1097, was that Miranda would get shot, Mr. Miranda would
12 get shot in different places. He would get shot in Courtlandt
13 Avenue, and then he would move to Melrose. Then he got shot
14 there and he moved to Maria Lopez. Which is actually where he
15 lived and he got shot there.

16 What does this suggest to you? It suggests to you, I
17 hope, and I think it should, that he was a guy that wasn't part
18 of any alliance, he wasn't part of any group, he wasn't part of
19 any gang, and he wasn't part of any conspiracy. He was on his
20 own. And he was getting shot at different places either
21 because he was caught in the crossfire of all the shootings
22 between GFC and YG, remember there was shootings at Maria Lopez
23 where he lived which is 2950 Park Avenue. Or, he would say
24 maybe I can take up residence here and on the street and do
25 what I was doing, and he would get shot and go somewhere else.

CBR3MER5

Summation - Mr. Becker

1 No other person in this case was there evidence like this
2 about. A man who the government said in its opening terrorized
3 the neighborhood was himself the victim of attempted murders on
4 several occasions.

5 So, it is important for you to, I hope, see the
6 significance of that. Not because you should feel sympathy for
7 him or anything like that. That's not appropriate and that's
8 not what I'm asking. But because it shows, number one, that he
9 wasn't seen again after September 10, 2011, September 11, and
10 also the fact that he was shot in different places suggests
11 that he was on his own almost like a nomad.

12 Just, his getting shot, and being in the hospital, and
13 being in different places, is further evidence for you that he
14 was not part of any gang and not part of any conspiracy to sell
15 drugs.

16 Now, I want to talk about the so-called gun. And in
17 my opening statement, I referred to it I think as a phantom
18 gun. And the reason I called it a phantom gun, well, there
19 were lots of reasons, but most significantly, because I said
20 you would not hear -- you would not see the gun, you would not
21 hear any evidence that the gun was ever recovered, there was no
22 forensic evidence regarding that gun. No proof of that gun
23 existed, other than the testimony of some of the cooperators in
24 this case.

25 And here's what I think the evidence was about this,

CBR3MER5

Summation - Mr. Becker

1 and it was so paltry that I hope you'll conclude it's easily
2 dismissed. First of all, this is a criminal organization that
3 had no shortage of guns. I think we can agree that witness
4 after witness talked about 9s and .380s and .22s and .45s and
5 how they were kept at different people's apartments and there
6 were 10 or more of them and there were plenty of guns. And
7 witness after witness told you that the guns were provided by
8 who? By T-Money. T-Money provided the guns. And I think they
9 may have said on one occasion one of the defendants here
10 provided a gun. But certainly not Mr. Miranda. So, there was
11 no shortage of guns.

12 Folks said that GFC people had at least 10 guns. 9s,
13 .40s, .45s, .38s, .22s. Pemberton said that he had guns in his
14 apartment, they all came from T-Money I believe. Folks said
15 most of them came from T-Money. Nobody said, there is no
16 evidence in this case that Mr. Miranda ever provided a gun to
17 this enterprise. All right.

18 This is another thing that's very important for you to
19 understand. I don't believe the evidence has shown at all that
20 Mr. Miranda ever possessed or used a gun. But even if you were
21 to conclude, even if you were to conclude that he did at some
22 point have a gun, he's not charged with possession of a gun.
23 He's charged in count 22 with using or possessing a firearm in
24 furtherance of the narcotics conspiracy charged in count 13.
25 So, and again, I don't think the evidence comes close to

CBR3MER5

Summation - Mr. Becker

1 showing he had a gun, but if he had a gun because he was afraid
2 somebody was going to come and try to kill him, that's not
3 guilt under count 22. Count 22 says he had to have possessed
4 or had the gun in connection with a drug conspiracy charged in
5 count 13. And indeed, as I think one of my colleagues said, if
6 you conclude that the government has failed to prove that
7 Mr. Miranda is guilty of the charged drug conspiracy, count 13,
8 you don't even consider the gun charge. It's over. It's out.
9 Because the gun charge is not a gun charge like you might think
10 in New York State, if you possess a gun you go to jail, you see
11 it the subways. No. This is a gun charged in connection with
12 the charged drug conspiracy.

13 So what's the evidence on the gun. Sometime between
14 January 2010 and September 2010, that's a 10-month period,
15 Devin Parsons said that Mr. Miranda, a man who had never before
16 been seen with a gun by law enforcement or anyone else, never
17 been found with a gun, never engaged in a single act of
18 violence in his whole life, told him that he had a new gun.
19 And he said take a walk with me back to Maria Lopez where I
20 live. And I'm going to give it to you. And they walked I
21 think he said three to five minutes, it's only a couple of
22 blocks, and Mr. Parsons testified that they went into the lobby
23 and Mr. Miranda went upstairs and came downstairs about a
24 minute later, and handed him a gun. I guess he said it was a
25 black and silver 9-millimeter gun.

CBR3MER5

Summation - Mr. Becker

1 Now, we know that that couldn't have happened. How do
2 we know. Putting aside because it came from the lips of Dev
3 Parsons. Even if it came from anyone, how do we know that it
4 cannot be that Mr. Miranda walked back with Mr. Parsons to
5 Maria Lopez, went into the lobby, went up in the elevator to
6 where he lived, came down and handed him the gun? We know it
7 from Exhibit 16.1 and 16.2, and 16.3, and the other photographs
8 that I offered in this case through Mr. Miranda's aunt Lillian
9 Miranda Konate. What did she tell you? What does the evidence
10 bear out? It bears out that access to Mr. Miranda's apartment
11 is not through a lobby. It's not up an elevator. It's on the
12 first floor. Street level. First floor. That's the door.
13 That's the only way to get in or out of that apartment. That's
14 what she told you. And she said that the way you get on that
15 sidewalk is by walking through a gate at the end of the
16 sidewalk.

17 So, look, the man was drunk, stoned, and perhaps
18 hallucinating on ecstasy and he imagined something. But there
19 is no chance that what he says could have happened.

20 But his story doesn't get any better. In fact, it
21 gets worse because now he says that Mr. Miranda gave him the
22 gun, by the way, apparently, in broad daylight. Why he would
23 want to do that, a man who was never seen with a gun ever
24 suddenly is allegedly giving somebody a gun in broad daylight
25 and says walk it back the three to five minutes to your

CBR3MER5

Summation - Mr. Becker

1 apartment. And then Mr. Parsons says two hours later
2 Mr. Miranda comes back and retrieves the gun, and on the fourth
3 floor, that's where Mr. Parsons says he is, in an apartment
4 building on the fourth floor. What does Parson's imagination
5 add to this? He saw from his apartment that Mr. Miranda went
6 down two flights of stairs on the fire stairs to the second
7 floor, where, what do you know, that's where Earl Pierce
8 apparently lived or was. The implication being that
9 Mr. Miranda was with that gun, gave it to Mr. Pierce.

10 Now, some of us live in private homes, some of us live
11 in apartment buildings, some of us have lived in apartment
12 buildings. If you're standing in the doorway to your
13 apartment, can you see down a hall, through a fire door, down
14 two flights of stairs to where somebody goes when they leave
15 your apartment and go to the stairs? Even if you walk the
16 person to the stairs, the fourth floor stairs, you can't see it
17 because it's fire stairs, you can't see what's two flights
18 below you. Again, there is no chance that happened and I
19 suggest to you it is entirely made up.

20 To be sure, the government also will point to, if they
21 have not already, evidence that Mr. Miranda when he was in
22 jail, again alone in a cell with one of their cooperators, with
23 nobody else around, a man who he hadn't seen in a year, I think
24 this was Mr. Folks said that I guess it was June 1st of this
25 year, that Mr. Miranda told him that somebody had asked him for

CBR3MER5

Summation - Mr. Becker

1 a gun like he needed it. And that Mr. Miranda gave him the
2 gun. That weeks passed, he called to receive the gun back, and
3 the person denied his calls. All right.

4 Now, Folks and Pemberton I believe and others were
5 together in jail, they saw discovery in this case as other
6 lawyers have told you, they knew there was an allegation
7 against Mr. Miranda involving a gun. And so, I guess they had
8 an incentive to add something and say that Miranda said this.

9 It's quite remarkable. In all the time anybody saw
10 him on the street, nobody ever saw him have a gun. You heard
11 evidence that Mr. Miranda was arrested twice. Once in
12 possession of 22 bags of drugs that was identified as crack,
13 and the second time with clear bags. And he was searched each
14 time. And each time that he was searched, they didn't find a
15 gun, they didn't find bullets, they didn't find any evidence of
16 a gun.

17 Mr. Miranda was arrested in this case I believe it was
18 November 10, 2011. Agent Castillo told you that. And she said
19 that he was searched. They didn't find a gun, they didn't find
20 bullets, they didn't find a telephone, they didn't find any
21 evidence whatsoever that Mr. Miranda had ever possessed a gun.
22 The only evidence in this case that Mr. Miranda ever possessed
23 a gun is from the mouths of these cooperators.

24 Now, I want to talk a little bit more about guns.

25 You don't have them here? No problem.

CBR3MER5

Summation - Mr. Becker

1 Something else struck me on Thanksgiving. It's quite
2 a day. Which had not struck me before. I thought the
3 government might have the guns in the courtroom today. But
4 witness after witness testified, oh, yeah, he had it in his
5 waistband, it was a 9-millimeter. Oh, he was holding it, it
6 was a .22, .380, like these guys are world authorities on gun
7 calibers and the caliber of a gun.

8 So it occurred to me, how can these drunken, stoned
9 sociopaths just be able to say, oh, yeah, it was a 9, it was a
10 .380. Well, again, we don't have the guns. This Government
11 Exhibit 1500 which pictures a .380. As you can see, it's black
12 and silver. Okay. And this is Government Exhibit 1501, which
13 pictures a .40. As you can see, it's all black. But, put the
14 color aside for a minute. They look essentially the same, I
15 think. But I wasn't sure. And I went back and I checked the
16 record of this trial. Because who were the only two people who
17 testified about guns in this case that bore credibility at all?
18 They would be the two agents from the bureau of Alcohol,
19 Tobacco & Firearms, right? That's their profession. They
20 study guns, they collect guns, they seize guns, they fire guns,
21 they own guns. Right? So it occurred to me how can these
22 miscreants identify a 9-millimeter gun by looking at it in the
23 dark on September 13 or whatever it was. So I asked Agent
24 Collins on cross-examination. This is page 5383.
25 "Q. Are you familiar with what a 9-millimeter firearm looks

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Summation - Mr. Becker

1 like?

2 "A. You can't look at a firearm and tell what caliber it is,
3 other than the marking on the firearm. You can make an
4 estimate based on the size of the barrel, and the opening of
5 the barrel."

6 Look, these witnesses are more than happy to make
7 estimates about, oh, I can look at a bag and say there's
8 two-tenths of a gram of drugs in it because it was a guess.
9 They can say it was a 9, it was a .380, it was a .45.

10 Given the testimony of Agent Collins, given your own
11 eyes, can you believe that anybody who testified for the
12 government, any of these cooperators could look at any gun and
13 say, oh, yeah, that was a 9-millimeter? Or that was a .380?
14 Or was that something that they thought the government needed
15 for its case? Something that would help the government?

16 Look, I want to be very clear about this and I assure
17 you you'll get no dispute from Ms. Heller in her rebuttal
18 summation. The government did recover some 9-millimeter guns
19 in this case. And they even recovered one I believe that was
20 black and silver. I think it may have been Government Exhibit
21 500, I'm not sure. But the government has not argued and they
22 will not argue, I promise you, that this so-called phantom gun
23 that Mr. Miranda allegedly possessed has ever been held in
24 their hands. Has ever been seen by them. Has ever been
25 photographed, has ever been found to have been purchased

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1 anywhere. There is no receipt. There is no document. There
2 is no photograph. There is no gun. It is a phantom gun. It
3 exists only in the minds of these cooperators. A couple of
4 them. And that's it.

5 So I suggest to you that even if you were to find that
6 Mr. Miranda was part of this drug conspiracy, which he wasn't.
7 Even if you were to find that he possessed -- excuse me, that
8 he was a member of the drug conspiracy. You cannot find proof
9 beyond a reasonable doubt, proof that you can rely on, proof
10 that you can go home and for the rest of your lives say to
11 yourself when we sat in judgment of Nolbert Miranda in October
12 and November of 2012, and we were conscientious and we sat in
13 judgment, I know, I know, I remember, I didn't lose a minute of
14 sleep at night, that the government proved beyond a reasonable
15 doubt that Mr. Miranda, who had never been seen with a gun,
16 possessed a gun in furtherance of a drug conspiracy.

17 The final charge against Mr. Miranda is actually count
18 two. This is a charge that not only is Mr. Miranda not guilty
19 of, quite frankly I don't know how he was ever charged. This
20 is a charge is called a RICO conspiracy. Racketeer Influenced
21 Corrupt Organizations Act. Short RICO. And what it is in some
22 sense is not just a conspiracy of people working together to do
23 illegal things, which is what a regular conspiracy is, such as
24 a drug conspiracy charged in count 14. No. This is where
25 people work together in furtherance of the affairs of a

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1 criminal enterprise. A criminal organization that exists
2 independently of the members of the individuals.

3 So, it's not a question of did Mr. Miranda ever agree
4 with anybody that he would sell drugs or the person he made an
5 agreement with would sell drugs. No. That might be a drug
6 conspiracy. Not the drug conspiracy charged in this case, but
7 that might be a drug conspiracy. No. There has to be an
8 agreement by Mr. Miranda, a meeting of the minds with someone
9 to violate the RICO statute. That is, to engage in the affairs
10 of the criminal enterprise through a pattern of racketeering
11 activity.

12 Now, yesterday Mr. Fee told you all they have to do is
13 show two racketeering acts. When Judge Pauley gives you your
14 instructions tomorrow, you will learn they have to do more than
15 that. They have to show that the enterprise existed,
16 independent of Mr. Miranda that it existed, and he conspired to
17 join in its affairs. The judge is going to tell you that. And
18 he's going to tell you, I believe, that the government has to
19 prove that Mr. Miranda participated in some manner in the
20 overall affairs of the enterprise and objectives of the
21 conspiracy. And that he did so with the intent that he or
22 another member of the conspiracy would commit two or more acts
23 of racketeering as part of a pattern of racketeering.

24 The RICO statute is very complex and most lawyers
25 don't have a good grasp of it. I don't think most criminal

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1 lawyers have a great grasp of it. It was passed a long time
2 ago in connection with organized crime, but it is applicable --
3 it is not limited to prosecutions of organized crime. It can
4 certainly be used in other types of cases. But, it is complex,
5 it is onerous, and the government has a burden to prove many
6 things. To prove the existence of an enterprise that
7 Mr. Miranda was aware of and intended to further. Intended to
8 further.

9 When Mr. Miranda, the few times he may have sold drugs
10 to Mr. Crocker or Mr. Pemberton, the evidence is that was
11 taking money out of T-Money's pocket. It was taking money out
12 of the enterprise. It wasn't putting money into the
13 enterprise. It wasn't keeping anything humming. In fact, it
14 could have led to the engine stalling out.

15 And when Mr. Miranda was shot on September 11, 2010,
16 and never seen again selling drugs on Courtlandt Avenue area,
17 do you see any effect on the enterprise? I mean, somebody else
18 stepped in, right? And when Mr. Harrison, T-Money, even when
19 he was alive, when he said to people you can get your drugs
20 from me, but if I'm not around you can go to someone else,
21 remember it wasn't Mr. Miranda.

22 Look, I think the government would like you to believe
23 that just because -- the fact that Mr. Miranda sold drugs on
24 that block or in that area, that fact alone means he must be
25 guilty. Because, after all, T-Money could be violent and

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1 T-Money controlled the block. And if Miranda was working
2 there, it must have been because he had T-Money's permission.
3 Somehow that made him part of the conspiracy. Okay.

4 First of all, that's all wishful thinking. That's all
5 speculation. That's all, you know, that's the government
6 trying to, as someone said, take a square peg and make it fit
7 in a round hole. But, it is not consistent with the evidence.
8 Because the evidence is that T-Money said, I think it was to
9 Crocker, if somebody's not on our team, I don't want him
10 selling here. And then I asked him, and Mr. Miranda certainly
11 wasn't on their team -- or maybe Villafranco. And he said no.
12 Mr. Miranda was not on T-Money's team. Villafranco, who told
13 you he sold marijuana for himself and never worked for anybody,
14 sold it right on the block. And T-Money's people didn't just
15 sell crack, they sold marijuana. So Villafranco said he worked
16 for myself. T-Money, he may not have liked it, but, you know,
17 I did it.

18 The government wants everything to be black and white.
19 Black and white works great when you are a prosecutor. It
20 works great. They get to make judgments about people and they
21 put them in one of two boxes: They're guilty or they're not
22 guilty. If they put him in the guilty box, all their evidence
23 has to fit together. There has to be an explanation for
24 everything.

25 When the government opened, you heard a little bit

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1 about Mr. Miranda and how he was part of this and the
2 government witnesses, their own witnesses said, no, he worked
3 on his own. He didn't provide drugs to people other than the
4 couple of sporadic occasions.

5 So all of a sudden Mr. Miranda's role and in Mr. Fee's
6 summation morphed into he was one of the older guys keeping it
7 humming along. Because what else could he say? He couldn't
8 have said that every one of his witnesses lied when they said
9 Mr. Miranda worked for himself. So, keep that in mind.
10 Please. Keep that in mind.

11 These people are well intentioned. I respect them and
12 admire them. I told you that on day one. They are human
13 beings and they worked really hard. They want to win. They
14 want to win. But winning for the government is when justice is
15 done. Winning is when justice is done. It's not a conviction.
16 No matter what your verdict is in this case, so long as it is
17 the product of your careful and conscientious and thoughtful
18 consideration of the evidence and lack of evidence against
19 Mr. Miranda and these other defendants, no matter what that
20 judgment is, whether it be guilty or not guilty, that's a win
21 for the government.

22 The government represents us. We, the people. We,
23 the people. That includes you, me, Mr. Miranda, everybody else
24 sitting here on trial.

25 I'm sure I left stuff out. And when I sit down I'm

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Summation - Mr. Becker

1 going to go like that. Because it always seems to happen.
2 But, I hope I didn't leave too much out, and I hope that you
3 will consider what I've said and consider things I haven't
4 said. I'm not running from the evidence in this case.

5 And I just remembered a critical point that I left
6 out. Mr. Miranda took up Judge Pauley on his representation
7 and his statement to you that a defendant never has to testify
8 in his own behalf. Because he's presumed innocent and the
9 burden of proof is always with the government.

10 But you know what? Mr. Miranda has spoken to you.
11 He's spoken to you in two ways. He's spoken to you by his not
12 guilty plea, which says I, Nolbert Miranda, an American citizen
13 of the United States, presumed innocent of every charge against
14 me, hereby deny each and every allegation against me. I didn't
15 do it. And if they're going to convict me, they have to prove
16 if beyond a reasonable doubt. Okay. That's how he's spoken to
17 you.

18 And he's spoken to you in another way. He spoke to
19 you after he was arrested by Agent Castillo. Do you remember
20 Agent Castillo told you that when she arrested Mr. Miranda in
21 Monticello, New York, she put him in the back seat of her car.
22 He was handcuffed behind his back and he made statements to
23 her. Now, he didn't prepare with anybody for what he said. He
24 didn't get coached to tell the truth. He didn't meet for a
25 hundred hours over two years or longer. He was handcuffed

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1 behind his back and he had just been arrested and according to
2 the government, he made statements.

3 What did he say? He said a lot of things. He said he
4 had been selling in the Courtlandt area for years. He said he
5 was friends with T-Money. Terry Harrison. We haven't denied
6 that, and in fact we've acknowledged that he was seen selling
7 in Courtlandt Avenue. He said that GFC sold narcotics for
8 Terry Harrison. GFC. The gang. The criminal enterprise. The
9 Bloods. They sold. He told Agent Castillo that he did not
10 sell for T-Money, and he did not sell with T-Money. This is at
11 3424 of the transcript if you want to make a note.

12 Think about it. The man's just been arrested. He got
13 arrested unexpectedly. He was I think at a bus station. He
14 hasn't had time to meet with a lawyer, he hasn't been coached,
15 he hasn't been made presentable, he hasn't been cleaned up, he
16 hasn't reviewed discovery, he hasn't considered his options,
17 he's handcuffed behind his back and he made statements. And
18 boy, don't they ring true. Don't they ring true considering
19 the evidence you heard.

20 He did not sell for T-Money and did not sell with
21 T-Money. Has that been contradicted in this case by a single
22 witness? He said that GFC members were responsible for
23 shootings in the Melrose and Jackson Projects. Does that ring
24 true? Does that have the ring of truth? Have you heard
25 testimony about that? Have we disputed that? Has he run from

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Summation - Mr. Becker

1 that? He told her he was not a member of GFC or any gang. He
2 was surprised he got charged in this case because it's GFC that
3 you want. It's those people, not me. He said, as I told you,
4 that he sells for himself. He was surprised he was arrested in
5 this case because he was not GFC. And he was surprised that he
6 was indicted with these people. And by these people, he meant
7 the gentlemen here, and the other people named in the
8 indictment. The Aubrey -- the Devin Parsons and the Bernard
9 Folks and Capo and all the other people that you heard about.
10 And they spoke specifically about him being shot several times.
11 How he was shot in 2009 after Agent Castillo had made an arrest
12 of lots of people. And according to Agent Castillo, he said he
13 was shot because he wasn't indicted in that case.

14 So why would he maybe think that? Well, you've got 50
15 people who were allegedly in a gang, a violent gang, and they
16 all get charged and he didn't. He didn't because he had
17 nothing to do with them, like he had nothing to do with these
18 people. He was perhaps afraid that or he thought that maybe
19 they thought he was snitching. Maybe they thought he was
20 cooperating. That's why he didn't get charged. So he says I
21 got shot -- he thought he got shot 2009 because he wasn't
22 indicted in this case. And then of course he confirmed that he
23 was shot on September 11, 2010.

24 That reminds me of another bit of evidence I wanted to
25 just address very, very briefly. Folks said that when he was

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Summation - Mr. Becker

1 in the pens with Mr. Miranda, Mr. Miranda told him that he had
2 loaned a gun to someone. He didn't say he loaned it for any
3 criminal purposes or in connection with any drug conspiracy. I
4 think you heard some other evidence about someone saying
5 Mr. Miranda saw a gun that he had supposedly provided and said
6 don't do anything with that gun. Don't do anything with that
7 gun. You remember? What does that mean? Does that mean use
8 it in connection with a drug conspiracy?

9 By the way, he's not charged with any violence. He's
10 charged with possessing or using or carrying a gun in
11 connection with the narcotics conspiracy. I want to be very
12 careful and clear about that.

13 But back to what Mr. Miranda said to Agent Castillo,
14 at least as Agent Castillo testified, I think every statement
15 he told you has been borne out by the evidence in this case. I
16 really do. Every statement. He never ran from what he did.
17 He never, he didn't lie. He didn't get caught in lies. He
18 didn't embellish, he didn't fabricate, he didn't stretch the
19 truth. He said what he did and he said what he didn't do.

20 I mean, he's been a remarkable client for me. And I
21 really, really feel the burden of fighting for him. He
22 shouldn't be in this case. He doesn't belong in this case.
23 The government was allowed to charge him and they were allowed
24 to try him and they did.

25 Thank God we have a jury like you. There are four

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Summation - Mr. Becker

1 trials here. His trial is separate. It is distinct. This
2 isn't about whether you like me or like Mr. Dinnerstein or like
3 Mr. Fee. This isn't a popularity contest. This isn't a
4 personality contest. This isn't about who you think is the
5 great lawyer and who you think is not the great lawyer.

6 I didn't put up any slides, you know, I did this the
7 old-fashioned way. I've got to get with the program and start
8 putting up slides, but it's not about that. It's not about
9 ego. It's not about personality.

10 The decision that you make in this case you are going
11 to live with for the rest of your lives. And Mr. Miranda is
12 going to live with for the rest of his life no matter what it
13 is.

14 (Continued on next page)

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Cbrlmer6

Summation - Mr. Becker

1 MR. BECKER: And I feel that this process in a way has
2 been cathartic because it has -- Mr. Miranda waited for a long
3 time to have the jury like you judge him. And he's made no
4 excuses. He hasn't minimized, he hasn't done anything other
5 than, you know, do what he did, and he's not guilty, and I ask
6 you, let him go home.

7 Thank you.

8 THE COURT: Members of the jury, we're going to take a
9 brief recess and then you will hear the government's rebuttal.
10 The government's rebuttal will be 45 minutes. And then we will
11 suspend for the rest of the afternoon and tomorrow I will
12 deliver my charge to you. I'll tell you more about that at the
13 conclusion of today's proceedings.

14 Keep an open mind, come to no conclusions, and don't
15 discuss the case.

16 Please recess the jury.

17 THE CLERK: Come to order. Jury exiting.

18 (Jury excused)

19 THE COURT: Are there any issues that counsel wish to
20 raise?

21 All right. We'll take about 25 minutes.

22 (Recess)

23 (In open court; jury not present)

24 THE COURT: Ms. Heller, are you ready to proceed?

25 MS. HELLER: I am, your Honor.

Cbrlmer6

Summation Rebuttal - Ms. Heller

1 THE COURT: I'll ask you to begin to conclude when you
2 have five minutes, all right? And then I'll give you one
3 minute. I'll give you a one-minute. All right?

4 Let's bring in the jury.

5 (Jury present)

6 THE COURT: Members of the jury, at this time I ask
7 that you give your undivided attention to Assistant United
8 States Attorney Nola Heller as she delivers a brief rebuttal on
9 behalf of the government.

10 MS. HELLER: Hi, everyone. We are almost there.
11 We're almost done.

12 You've had a bunch of lawyers talking at you for two
13 days now, and I really do not want to prolong things
14 unnecessarily, but as you can see, I basically jumped out of my
15 seat because I have so many things that I want to say to you
16 here today.

17 Most importantly, we think it's important that when
18 you go back into that jury room, you're thinking about the
19 right things, and that's the facts and that's the evidence in
20 this case. I suggest to you that much of what you heard from
21 the defense attorneys here, if not most of it, was designed
22 specifically to distract you, to mislead you, and to invite you
23 to speculate, but you know what, as good as, and as experienced
24 as these lawyers are, they're not magicians. They cannot make
25 the evidence and they cannot make the facts disappear.

Cbrlmer6

Summation Rebuttal - Ms. Heller

1 Now what I'm going to do here today is I'm going to
2 make some general points first, then I'm going to go through
3 some specific arguments that each counsel made, but sadly, I do
4 not have time to respond to each and every argument that was
5 raised. I would really love to, but I don't have the time. So
6 I'm just going to do the most important parts, and forgive me
7 if I skip around.

8 But first, Mr. Fee correctly predicted that counsel
9 would talk a lot about the government's cooperating witnesses,
10 call them all liars. You heard more than six hours, close to
11 seven hours of that talk.

12 I'm going to make some points up front about the
13 cooperators.

14 So first, the defendants are guilty if you believe
15 them. You have to think about why the defense attorneys spent
16 so long trying to convince you that the cooperators are lying.
17 As Mr. Miedel said, just throw all their testimony in the
18 garbage. He said just throw it all out; right? And of course,
19 as Mr. Fee said, the reason they did that is that they know,
20 right, if you believe the cooperators, it's over. It's done.
21 We can all go home. Their clients are guilty of all the
22 charges against them.

23 But how did they go about it, right, how did defense
24 counsel go about discrediting the cooperators? They repeatedly
25 emphasized how bad the cooperators were, what terrible people

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Summation Rebuttal - Ms. Heller

1 they were, committed terrible crimes. Just two very brief
2 examples. Mr. Becker, he reminded you of this comment, but it
3 really stuck in my head too. He called the cooperators, in his
4 opening statement, some of the most vile human beings you have
5 ever been in the same room with. He said you're going to feel
6 the need to take a shower when you see them and when you hear
7 them. Today Mr. Miedel called them emotionally and morally
8 dead. That's what he called them. The point, these people,
9 they committed terrible crimes, so that's it, out the window.
10 You can't believe them.

11 Now there is no question that these people committed
12 terrible crimes. We told you that at the beginning of the
13 trial. And the cooperators, they told you that themselves,
14 right, when they got on the stand. They didn't hide anything.
15 They told you about all the crimes they committed. Remember
16 Folks and Parsons -- and Mr. Miedel talked about this too --
17 telling you how it felt to shoot people; right? They said it.
18 They said, yeah, it felt good sometimes to shoot people. Yeah.
19 Mr. Folks said, I wanted to kill those people. That testimony,
20 that was hard to listen to for all of us. Right?

21 But this is not a popularity contest. This is not
22 about whether you'd have any of these men over for Thanksgiving
23 dinner. It's scare tactics, ladies and gentlemen.

24 Remember what Mr. Miedel and Mr. Becker said? Would
25 you lend Mr. Parsons your wallet? Would you lend Mr. Parsons

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Summation Rebuttal - Ms. Heller

1 your house key? God forbid, would you let Mr. Parsons watch
2 your infant? Okay. Ladies and gentlemen, I got to tell you,
3 if you open up your door, call a babysitter and you see Devin
4 Parsons there and he says, "Hey, here I am, ready to babysit
5 your infant," call 911, ladies and gentlemen. Call 911. Okay.
6 This has nothing to do with whether Devin Parsons is going to
7 babysit your infant. This has to do with whether you believe
8 his testimony on the witness stand. It's faulty logic, ladies
9 and gentlemen. It doesn't follow that because someone's
10 committed terrible crimes they can't be telling you the truth
11 about the crimes they committed and the people they committed
12 them with.

13 Now how do you know that the cooperators are telling
14 the truth? How can you assess whether they're telling the
15 truth? Because you have to do that, obviously. In this case
16 you have to do that. We submit there are five main ways.
17 There's probably way more than five, but there's five main ways
18 that we're suggesting to you.

19 The first is, think about their demeanor, how they
20 looked, how they sounded, how they acted on the stand. Did
21 they avert their eyes? Did they seem evasive? Did they refuse
22 to answer questions about their criminal past? No. Each one
23 of them got up on that stand, they laid it all out for you.
24 They didn't hold anything back. They told you about every
25 crime they'd ever committed -- crimes they're convicted of,

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Summation Rebuttal - Ms. Heller

1 crimes they'd never even been caught for, crimes the government
2 never would have known about if they hadn't admitted them.
3 Remember -- and then they pled guilty to crimes that they
4 weren't charged with when they were arrested. Devin Parsons
5 told you he was only arrested for one crack sale -- steering
6 one crack sale, not even making it. He pled guilty to two
7 murders and a host of other shootings and other charges here.

8 And why did he do that? Why did he do it? Because of
9 his cooperation agreement and the way the cooperation process
10 works.

11 And that gets me to the next point, which is
12 motivation and incentive. Now each cooperator told you about
13 how those agreements worked. All those agreements, by the way,
14 the cooperation agreements, they're in evidence. We put them
15 in evidence. We want you to look at them. Scrutinize them.
16 What they say is, if the defendants cooperate -- excuse me --
17 if the cooperators cooperate and they tell the truth, the
18 government will write them a 5K letter, send it to the judge,
19 and that gives the judge the power to give them a lower
20 sentence. There's no promises, the government doesn't
21 recommend any specific sentence, and the sentencing is totally
22 up to the judge. But if they lie, the agreement is ripped up,
23 and they'll likely end up spending the rest of their lives in
24 jail.

25 Remember Maurice Hagen? Remember when he was asked

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Summation Rebuttal - Ms. Heller

1 about this about -- by Mr. Dinnerstein, that he would get
2 struck by lightning if he lied on the stand? And what did
3 Mr. Hagen say?

4 What do you believe will happen to you if you lie on
5 the stand today -- if you don't tell the truth on the stand
6 today?

7 A. I'll probably spend the rest of my life in prison,
8 he said.

9 And that's the case with each one of the cooperating
10 witnesses. They varied in how articulate they were in
11 explaining to you, but they all understood what they had to do.
12 They had to lay themselves bare to you. They had to tell you
13 everything and anything that they knew, and that's what they
14 did.

15 Now also, a lot of argument about self-interest. The
16 government's witnesses were self-interested. They looked out
17 for number one. Yes, yes, they were. That's the whole point.
18 The best way for them to take care of themselves here was to
19 tell the truth. Telling a lie in this situation doesn't get
20 much more dangerous for these defendants when the government
21 fact checks everything that the cooperators are telling you.

22 MR. MIEDEL: Objection --

23 THE COURT: Overruled.

24 MS. HELLER: -- putting together maps of cell site
25 activity, examining ballistics evidence, examining more

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Summation Rebuttal - Ms. Heller

1 evidence, testing for DNA, talking to civilian witnesses like
2 Maria Ortiz, Dikeem Hill, Brittany Brown. Who would be crazy
3 enough to lie in a situation like that? In that situation, you
4 don't have to be a good person. You don't even have to believe
5 an oath to understand that your only option, the option that is
6 in your best interest, is to tell the truth. Even a
7 criminal -- and these guys were criminals -- knows that.

8 So whether these defendants get their 5K letter is
9 another thing he told you, doesn't depend on whether the
10 defendants get convicted. As long as they fulfill their
11 obligations and they tell the truth, they get the letter. Why
12 would they lie when the downside is so severe, life in prison
13 essentially, and there's no upside? They don't have to sink
14 the defendants to get a break.

15 Now a lot was said about substantial assistance by
16 defense attorneys. Witnesses wouldn't get their 5K letters
17 unless they provided substantial assistance. Again, Maurice
18 Hagen I think answered those questions most succinctly:

19 How did you believe that you can provide substantial
20 assistance to the government?

21 A. Just by telling the things I know, telling the
22 things that I perceive to be the truth.

23 No obligation to put anyone away. Just tell it like
24 it is and hope for the best. That's what the agreements say.

25 Now when you think about the cooperators, think

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Summation Rebuttal - Ms. Heller

1 about -- to get back to where I was -- what they said and what
2 they didn't say. Did the cooperating witnesses blame
3 everything on the defendants and minimize their own conduct?
4 Did they do that? Were they somehow trying to frame or sink
5 the defendants? Absolutely not. If anything, the opposite.

6 A few examples. Bernard Folks. If his goal was to
7 tell the best story to please the government, as the defense
8 attorney said, why wouldn't he have said that Earl Pierce
9 pulled the trigger and killed Jason Correa? The only people
10 who could have contradicted him are dead; right? If Folks'
11 goal was to do that, why not tell the story that way? Or, hey,
12 why not say that Joshua Meregildo shot the .40-caliber and he
13 shot at Tarean Joseph, not himself. That would have made him
14 less guilty and Meregildo more guilty. Why not say that? Why
15 not? That was not the truth. He was telling you the truth.
16 He was trying to be accurate, in every detail, because that's
17 what he knew he had to do under his agreement.

18 Pemberton, if his goal was to sink the defendants,
19 wouldn't he have accused Melvin Colon of shooting Jing Bao
20 Jiang and not said, no, it was me, it was me? He wanted the
21 gun but I kept it? Why would he say that? Remember also he
22 said -- and Mr. Miedel reminded you, to be sure -- he'd never
23 seen Earl Pierce sell crack? Would have been very easy to say
24 otherwise, if he thought he could have helped himself by lying.

25 The main point, if these defendants were lying to

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Summation Rebuttal - Ms. Heller

1 frame the defendants, wouldn't they have done a better job?
2 Don't you think they would have made it a whole lot worse?
3 These witnesses didn't exaggerate, they didn't make things up
4 to frame the defendants. They stuck to the truth instead.

5 Now several of the attorneys suggested to you that the
6 cooperators practiced their testimony to match, so that they
7 all would tell the same story that would please the government.
8 But you have to take this apart for one second, right, because
9 to believe that they all were lying about the same thing, you
10 have to believe that they got together in some sort of summit,
11 right, and that summit happened before Devin Parsons was
12 arrested, of course. They had to all be together to figure out
13 what they were all going to say. And they had to say at this
14 meeting, well, if we all get arrested by the Feds, here's what
15 we're going to do. We're going to go in and talk to them,
16 we're going to admit to every crime we've ever committed,
17 including things we didn't think -- the government didn't even
18 know about, didn't charge us with, we're going to plead guilty
19 to dozens of crimes, including murders, shootings, then guess
20 what, we're going to testify at a trial against our best
21 friends, and then we'll -- let's hope it all works out. Well,
22 clearly, that's not what anyone would have planned on. No one
23 would have wanted to do that. But that's exactly what they
24 each ended up doing, coming in, separately, and, separately,
25 telling the government what they knew and what the truth was,

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Summation Rebuttal - Ms. Heller

1 and then accepting responsibility for and pleading guilty to
2 those crimes, because that's how cooperation works in the
3 federal system. Any conspiracy frame theory is simply
4 impossible.

5 Now the fourth way you know they told the truth, this
6 one is a very simple point. They gave you such detailed
7 testimony. The type and level of detail, you can't make up.
8 Right? If they had invented this whole drug business out of
9 whole cloth, the war between T-Money, O and Luchie, the YG/GFC
10 rivalry, shootings and murders, you'd have to be Stephen King
11 or some sort of best-selling novelist to make up a whole world
12 like this and keep it straight the way the cooperators did.

13 Finally -- I'm not going to spend a lot of time on
14 this point, Mr. Fee did it at length in the summation -- is
15 corroboration; right? Think about how much or what the
16 cooperators said was consistent with and corroborated by all
17 the other evidence in this case. And when the defense
18 attorneys say, all you have is the cooperators here, ladies and
19 gentlemen, remember, that's not right. You have the
20 cooperators, and they -- first of all, they corroborate each
21 other, right, and second of all, they're corroborated by all
22 the other independent evidence and witnesses. Physical
23 evidence, the guns, the 911 calls, the autopsies, the lay
24 witnesses, too many examples to discuss them all, but we will
25 get into some specifics.

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Summation Rebuttal - Ms. Heller

1 Now the final point on cooperators -- and Mr. Miedel
2 predicted that I might argue this, and I'm going to do it,
3 absolutely, ladies and gentlemen -- the defense wants it both
4 ways. They want you to believe the cooperators are all liars,
5 liars. Right? You can't believe them. Throw them all in the
6 garbage. But even Mr. Miedel, who told you to reject those
7 arguments, he did this. They don't say the cooperators are
8 lying about everything. No. No, no. Don't -- maybe don't
9 throw it all in the garbage. A few things they want you to
10 listen to. They want you to listen to, of course, when the
11 cooperators talked about their criminal history, about all the
12 crimes they committed, except for the crimes with the
13 defendants. Pemberton, Villafranco, street robberies, how many
14 hours did we spend talking about those; right? That is
15 something that they want you to believe, Parsons' shootings,
16 Hagen's time with the Bloods. Listen to those, ladies and
17 gentlemen. Believe that. As long as the cooperators were
18 telling you about their own criminal past, they're magically
19 truth tellers. It happened again and again, in another very
20 important way, the cooperators were truth tellers whenever they
21 said anything good about the defendants, or beneficial to their
22 defense.

23 Aubrey Pemberton told you he never saw Earl Pierce
24 sell drugs. Mr. Miedel certainly told you about that one. He
25 wanted you to throw his testimony in the trash, but not that

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Summation Rebuttal - Ms. Heller

1 part. Not that part.

2 Anthony Crocker and Villafranco, they didn't see
3 Miranda get crack from Harrison. Mr. Becker, don't believe
4 that Anthony Crocker and Nolbert Miranda had any sort of drug
5 conspiracy going on. They weren't involved in the same
6 conspiracy. But do believe that Crocker didn't see Miranda get
7 crack from Harrison.

8 Folks never saw Meregildo get drugs. Mr. Lee, believe
9 him, believe Mr. Folks on that, but don't believe Mr. Folks
10 heard a detailed confession from Joshua Meregildo on the murder
11 of Ogarro. Believe that, don't believe that.

12 And Parsons, he told people he killed Ogarro because
13 of Aponte's personal beef. Believe that, ladies and gentlemen,
14 believe that, but not one other word he said.

15 Defense counsel want you to pick and choose and
16 believe the cooperators about what sounds good for their
17 argument and discard the rest. They want you to believe them
18 for -- only when it's about something that's a distraction from
19 their clients' guilt. They can't have it both ways, ladies and
20 gentlemen. The simple fact is that the cooperators told the
21 truth. Some of the truth was hard to talk about, when it came
22 to their own criminal activities. Some of the truth did not
23 help the government's case. But that didn't matter to the
24 cooperators. They told it how they knew it, as they were
25 obligated to do.

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Summation Rebuttal - Ms. Heller

1 Now I will get to that. One of the things that
2 happened during the numerous of the defense summations was that
3 several of the defense attorneys mischaracterized the evidence.
4 Now why did they do that? I submit it was so that they could
5 make arguments that helped their clients, and when that
6 happens, we feel we have an obligation to correct the record
7 and what was being said, and as Judge Pauley reminded you at
8 the start of the trial and again today, only the testimony and
9 exhibits are evidence, not the arguments of counsel. Don't be
10 misled by mischaracterizations of the record.

11 Let's talk about some of those. Mr. Lee spent most of
12 his time yesterday going over the Ogarro crime scene in detail.
13 He told you he wouldn't have to call Parsons a liar, because
14 the evidence would show that. But the evidence showed no such
15 thing. Mr. Lee only got there by mischaracterizing the record
16 for you. He took apart the transcript, he cited from it
17 selectively, he admitted what was convenient for him, and he
18 simply --

19 MR. LEE: I object, your Honor. Mischaracterization
20 and it's a personal attack.

21 THE COURT: Sustained.

22 MS. HELLER: Mr. Lee -- I'm going to get into
23 specifics -- argued that there was no testimony that Carrel
24 Ogarro was shot at from the front. He said over and over and
25 over that it was only from behind. That's belied by the

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Summation Rebuttal - Ms. Heller

1 record. Let's look at the actual transcript pages.

2 There's no -- the only thing that's blacked out here
3 is an objection that was sustained. So other than that,
4 there's no ellipses, there's no underlining, there's no changes
5 to the testimony. And there's two big blocks of text there.
6 And it's what Devin Parsons talked about what happened here.

7 Can you describe for the jury -- I'm looking on
8 page 2317.

9 He came through the path. He was walking towards us.
10 We were standing there. He stopped. He asked us, he said,
11 what's up? We said, what's up. He put his hands, like, in the
12 back of his pants, like, I don't know if he was going to pull
13 out something. I back up. Killa pulled out the gun and fired.
14 He tried to run. Killa fired again. I fired. And Killa fired
15 again and ran in the back door. And I walked up to him, stood
16 over him, and fired five times.

17 Next page, line 14:

18 Killa pulled out the gun and Killa shot. He tried to
19 run -- Killa shot again.

20 Both of those descriptions, that's where Devin Parsons
21 described the murder in narrative form, made clear that there
22 is a conversation going on. And in the middle of those two
23 blocks, you talk -- I say, line 22:

24 Let's slow it down a little bit.

25 There's a conversation. I'm not sure who spoke first.

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Summation Rebuttal - Ms. Heller

1 What's up with his brother or something like that. He said his
2 brother was good, they're standing there, they're face to face.
3 The first shot is fired and then -- then -- that is when Carrel
4 Ogarro turns to run.

5 So ladies and gentlemen, if you look at the actual
6 transcript, you'll see that what Mr. Lee spent about 30 or 35
7 minutes talking about is simply not right.

8 Let's talk about another argument. That's just easier
9 to read, but we did it -- another argument. Mr. Lee said: We
10 know from what Detective Jonathan Fox said that when you shoot
11 a .380, the shell casing goes to the side. And he says, the
12 location where the .380 shell casing was recovered establishes
13 where the shooter was.

14 But what did Detective Fox actually say?

15 "There's no scientific method for me to determine
16 where a person was standing based on where the cartridge
17 casings were recovered from."

18 MR. LEE: I object to that mischaracterization.

19 THE COURT: Overruled.

20 MR. LEE: Selective transcript.

21 THE COURT: Overruled.

22 MS. HELLER: So ladies and gentlemen, the ballistics
23 expert himself contradicted what Mr. Lee said that he said.
24 And when you think about it, Mr. Lee's argument, just putting
25 aside this, doesn't make sense about the casing. When you fire

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Summation Rebuttal - Ms. Heller

1 a gun, in an outdoor setting, anything could happen to the
2 casing. It could have been windy. Those things are tiny. You
3 can pick them up and look at them. It doesn't mean anything
4 that the casing wasn't in exactly the same spot where Parsons
5 was. It certainly doesn't mean that Mr. Meregildo is not
6 guilty of that murder, ladies and gentlemen.

7 There were other mischaracterizations as well, but I
8 don't have time to get into them now.

9 One thing, before we get to that -- actually, can we
10 make it blank for a second, Ms. Brady? Can we make it blank?
11 All right. We'll just stay on that one.

12 Now Mr. Meregildo suggested that Walter Aponte
13 committed the Ogarro murder with Parsons and not Meregildo.
14 But ask yourselves, did you hear one piece of actual evidence
15 that Walter Aponte shot Carrel Ogarro? Not a shred. That was
16 speculation. Nothing but speculation, innuendo. And ask
17 yourselves first, why would Devin Parsons lie and substitute
18 Aponte for Meregildo in his account of the murder? There's no
19 reason. You heard the time line. Parsons was the first
20 cooperator. He had no need to sink Meregildo in favor of
21 Aponte. Agent Castillo said Aponte didn't start cooperating
22 until two months after Parsons was even arrested. Parsons had
23 no reason to protect Aponte. He had everything to lose.

24 What was the actual evidence that you heard? You
25 heard from Parsons, Folks, and Brittany Brown that the shooters

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Summation Rebuttal - Ms. Heller

1 were Meregildo and Parsons. No one told you Aponte was the
2 shooter. And you remember all the corroboration of Parsons'
3 firsthand account. Ballistics, crime scene, first responders,
4 you saw the devastating cell site evidence that put
5 Mr. Meregildo at the scene of the crime with that significant
6 gap in texting and calling right at the time --

7 MR. LEE: Object. That's a misstatement of what the
8 evidence establishes.

9 THE COURT: Overruled.

10 MS. HELLER: I will take that opportunity. Please, I
11 don't have time. Take those records, look at the calling
12 records. You'll see a constant pattern of calls back and
13 forth, back and forth, back and forth, and texts that
14 Meregildo's making, and all of a sudden, what happens between 5
15 and 6 a.m. when the murder is happening? Two calls. It's
16 unbelievable, ladies and gentlemen.

17 And remember, Mr. Lee did not even mention that cell
18 site evidence in his summation. He didn't say one word about
19 it. Of course he doesn't have the burden to do anything,
20 ladies and gentlemen, but I submit that the reason it wasn't
21 mentioned is because it's indisputable. You can't say anything
22 about it. Mr. Meregildo would have to be the unluckiest man in
23 the world if it happened to be that all this evidence pointed
24 to him being involved in that murder. And the phone telling
25 you that he was involved in that murder, but, oh, the phone

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Summation Rebuttal - Ms. Heller

1 only happened to be at the scene of the crime at the time of
2 the crime, going from his house before the murder, back to his
3 house after the murder, oh, but he was innocent. He would have
4 to be the unluckiest man in the world. And that's why Mr. Lee
5 didn't address it, ladies and gentlemen, we submit.

6 So on motive, did anyone tell you the legitimate
7 reason the murder happened was because some -- of some personal
8 dispute between Ogarro and Aponte? No. No one told you that
9 was the legitimate reason. Parsons explained to you, he told
10 people that because he didn't want people to know the real
11 reason. That makes perfect sense. He didn't want to tell the
12 whole world he'd been hired as a hit man.

13 By the way, even if that were the motive -- let's just
14 say it was, but it wasn't -- it would still be a murder in aid
15 of racketeering because it was committed to protect a fellow
16 GFC member, Aponte. But it wasn't the real reason, and Parsons
17 had no incentive to lie about that to you, or about anything.

18 Finally, the argument that Parsons somehow crafted his
19 account of the motive when he began meeting with the government
20 in order to make out the elements of the charged murders is
21 simply absurd. Do you really think that Devin Parsons knew all
22 the elements of the various federal murder statutes when he was
23 arrested and started cooperating here? That he said, oh, wait,
24 I'm not going to say it's personal gain anymore, I'm now going
25 to say it was for pecuniary reasons? That makes no sense,

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Summation Rebuttal - Ms. Heller

1 ladies and gentlemen, because it didn't happen. All the facts
2 and the evidence point to the same conclusion. Meregildo and
3 Parsons shot Ogarro on T-Money's orders because everyone
4 thought he was snitching. Any other story has no basis in fact
5 or evidence.

6 Also, one more point. Mr. Lee said: Ladies and
7 gentlemen, I want somebody to place here one shred of evidence,
8 one shred, that Meregildo was involved in a conspiracy to sell
9 drugs. Here I have some shreds. I don't have time -- there
10 are a lot of shreds, ladies and gentlemen. I don't have time
11 to reach them all, but look at the transcript pages, 4019,
12 Crocker, 1498, Pemberton. The crack trafficking with
13 Meregildo. And Pemberton, Villafranco, Parsons, those
14 transcript pages on marijuana trafficking with T-Money and
15 Meregildo. There's plenty of evidence, ladies and gentlemen.

16 Now the conspiracy to murder members of the 321 crew.
17 Mr. Lee and Mr. Miedel each argued that Tarean Joseph -- the
18 Tarean Joseph shooting was not based on any conspiracy to
19 retaliate for T-Money's death. It was just spontaneous and
20 unexpected, they called it. Now it's a good example of picking
21 and choosing when they want you to believe cooperators and when
22 they don't. It's obvious what happened here, ladies and
23 gentlemen. T-Money dies; right? Meregildo runs outside half
24 dressed to find -- they want to find out who is responsible.
25 They're distraught. They find 321 people celebrating, they

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Summation Rebuttal - Ms. Heller

1 know they're connected with Luchie, they decide they're
2 involved. The day that it happens, Folks tells you that
3 Meregildo calls -- called him and Parsons tells you Pierce
4 called him. They both asked for guns. That's not an
5 inconsistency, ladies and gentlemen. That shows you how much
6 they wanted guns. They both made calls. Get that gun down
7 here. And they get -- they go to the car, they drive to
8 Harlem, they come back, they get out, they see the crew.
9 Transcript page 686, Pierce says, it's going to rain 40 days,
10 40 nights. That's what Folks testified to. And he starts
11 shooting with the 9. And then Pierce, Meregildo yell to shoot,
12 shoot him, shoot him, they say, and he does. Now Folks
13 testified that it all happened very quickly, spur of the
14 moment, but there's no doubt in his mind why it happened.

15 And here are portions of the transcript, you can see
16 them, that defense counsel didn't want you to remember. Folks
17 tells you his understanding of why this happened: Stemmed from
18 the T-Money incident, with T-Money being killed. That was
19 where the money came from, from the hit, from 321.

20 Pemberton, who hears confessions from the defendants
21 after the shooting, hears the same thing.

22 There's no requirement that a conspiracy last any
23 particular length of time. Here, three people, armed with two
24 guns, agreed to shoot at the 321 crew, who they thought were
25 responsible for T-Money's death. Then two of them shot the

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Summation Rebuttal - Ms. Heller

1 man. End of story.

2 Now what I'm going to try to do is address some things
3 about the Correa murder, as quickly as I can.

4 Now Mr. Pierce's attorney spent a good deal of time
5 arguing that the surveillance videos taken outside of
6 Courtlandt at the time of the murder means that Pierce can't be
7 guilty of the murder. Means no such thing, ladies and
8 gentlemen. Don't be distracted by that argument. First of
9 all, there's no evidence on the record that the times stamped
10 on the video are correct, or correspond to the actual time of
11 the events.

12 So putting that aside, assuming they're true,
13 Mr. Miedel wants you to think that because the video shows
14 Pemberton and Folks walking from up Courtlandt Avenue, they
15 could not have actually heard what they said they heard, saw
16 what they said they saw. He wants you to think that this video
17 shows Parsons walking to 681 alone and not with Levi, as he
18 remembered, he wasn't telling the truth, and what it all really
19 boiled down to, for him, Folks and Pemberton, they can't both
20 be telling the truth, so they must both be lying.

21 Of course they can both be telling the truth. What
22 does all of this argument really mean? What does it boil down
23 to? The cooperators maybe didn't remember exactly where they
24 walked and went. Now do you remember the way that you walked
25 to work on November 27th, 2010, two years ago? And whether

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Summation Rebuttal - Ms. Heller

1 you ran into one of your colleagues on the way to work? Do you
2 remember what you had for lunch that day? Probably not. But
3 if on that day someone had confessed his involvement in a
4 murder to you, you'd better believe you would remember that.
5 And Mr. Miedel used the court reporter example. I hate to keep
6 involving the court reporters, but he said, you'd remember if
7 the court reporter shot someone. Of course you would. That's
8 the whole point. That's our point. Right? They don't
9 remember the little things about which way they walked and
10 when, but they do remember, right, Folks does remember hearing
11 Earl Pierce say: My cousin's with him. Let him live. I'll be
12 waiting for you at the top of the stairs. If you're Pemberton,
13 you remember offering to do it yourself, thinking it's a
14 robbery, and then finding out that it's a murder, and you'd
15 remember someone saying, why don't you do it? Those are the
16 things that stick out.

17 Now, Ms. Brady, if you could put up 1410.

18 Mr. Miedel argued that once they get inside the lobby,
19 the accounts were so inconsistent, they couldn't both be true.
20 But that's belied by the record as well.

21 Mr. Pemberton:

22 Can you tell the jury what happened once you were
23 inside the lobby.

24 I was on the phone, and they went around like a little
25 corner.

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Summation Rebuttal - Ms. Heller

1 Who went around the corner?

2 T-Money, Ski Box, and Akon. They were arguing. And I
3 went over there and I said, Let me do it.

4 He's on the phone. He's not with them the whole time.
5 He doesn't hear everything that they're saying.

6 Thank you, Ms. Brady.

7 Ladies and gentlemen, it's completely possible that
8 the stories are consistent and Mr. -- Mr. Miedel, respectfully,
9 didn't appear to remember that portion of the transcript
10 because he argued that Pemberton was there the whole time so it
11 couldn't possibly have been true. But even Mr. Miedel had
12 trouble remembering small details. All right. We all have
13 little gaps in our memories. It doesn't mean we're lying and
14 it doesn't mean that these things didn't happen the way we know
15 that they did.

16 Here's what they were consistent on. Pierce and
17 T-Money deep in conversation, Pierce and T-Money walk into the
18 building, Correa shot dead shortly afterwards. It's clear what
19 happened. Pierce came up with a plan, he lay in wait while
20 T-Money did the dirty work, then he collected the gun, his gun.
21 Don't be distracted by the little details. Earl Pierce
22 planned, aided, and covered up the murder of Jason Correa. End
23 of story.

24 Now Pierce and Miranda both want you to believe
25 there's no overarching drug conspiracy, there's no enterprise,

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Summation Rebuttal - Ms. Heller

1 this is a loose confederation of independent crack sellers,
2 members of different gangs, nothing consistent here.

3 Now first, take a look at the indictment. We never
4 said everyone was a member of the same gang. Mr. Aravind never
5 told you that. It's not charged that way. We never even said
6 everyone got along with each other. As Judge Pauley will
7 inspect -- will instruct you, I believe, you don't even have to
8 know every other member of the conspiracy. Certainly you don't
9 have to like every other member of the drug crew or your gang
10 in order to agree to work together for a common purpose. And
11 the common purpose of this crew was to sell drugs, make money,
12 commit acts of violence. And not -- not all for T-Money,
13 ladies and gentlemen, as Mr. Becker had you believe. For
14 themselves. Everyone wanted to make money for themselves.
15 They were not out there out of the goodness of their own
16 hearts, making money for T-Money. No. They all wanted to get
17 together there on their exclusive turf and sell drugs and make
18 money. That was their common purpose. This is not T-Money's
19 band. It's all their band. They're all playing in the band
20 together.

21 Now Mr. Miranda helped T-Money get on his feet when he
22 got out on the jail. You heard testimony that he gave him some
23 of his regular customers. He told that to Folks, he told that
24 to Crocker. He was there at the very start, he was there right
25 through the day T-Money died, selling alongside other GFC

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Summation Rebuttal - Ms. Heller

1 members on T-Money's strip, supplying Pemberton, supplying
2 Crocker, sharing customers with Parsons. Mr. Becker didn't
3 mention that. Not surprising. Devastating evidence of
4 conspiracy.

5 Pemberton.

6 Ms. Brady, if you could put up 1330.

7 Pemberton told you about overhearing Miranda and
8 T-Money discussing going in together on a purchase of a hundred
9 grams of crack:

10 Who did you hear say something about a hundred grams?

11 Oh, T-Money.

12 What did T-Money say about a hundred grams that day
13 during the conversation with PayDay?

14 They was going to get a hundred grams of crack.

15 Ladies and gentlemen, that's the ball game. I mean,
16 the point is here not that PayDay was selling for T-Money. No
17 one's telling you that. It's that PayDay is on T-Money's
18 level. They're both supplying GFC members on that block and,
19 in fact, going in for drugs together.

20 More drug evidence -- oh, Ms. Brady, if we could
21 switch back -- against Mr. Miranda. And slides again. That
22 will remind you about all the drug evidence against
23 Mr. Miranda. And I don't have time to read them again. You
24 can take down the page cites if you like. But the sharing
25 customers, the being supplied by them, from all the

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Summation Rebuttal - Ms. Heller

1 cooperators, selling crack with the others who are part of the
2 same crew. That's the stuff of conspiracy. And it shouldn't
3 come as a surprise that Folks and Villafranco had less specific
4 information on Miranda's crack sales. To be sure they saw him
5 out there selling, they told you that, but remember Folks and
6 Villafranco, they sold marijuana, not crack, so they didn't
7 know whether he was supplying other GFC members. That doesn't
8 make Miranda any less guilty of the conspiracy.

9 Now the same goes for Pierce. Some of the
10 conspirators -- Pemberton, Villafranco -- didn't see him
11 selling crack or working with the other members of T-Money's
12 crew, but others sure did. Remember -- remember Folks'
13 description that Mr. Fee quoted for you of Pierce and T-Money
14 dividing up the crack between them when a new shipment came in?
15 You heard the same thing from Parsons, who told you that he
16 gave his profits to Pierce, remember, when T-Money wasn't
17 around. He also told you Pierce instructed him, shoot anyone,
18 shoot O or Luchie if they come to the block and they try and do
19 anything.

20 (Continued on next page)

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22
23
24
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Rebuttal - Ms. Heller

1 MS. HELLER: And don't forget Maria Ortiz saw Pierce
2 and T-Money counting money together in her kitchen. Mr. Miedel
3 didn't mention that part of Maria Ortiz's testimony.

4 Now, the fact that several of the government's
5 witnesses didn't know for sure whether Earl Pierce or T-Money
6 were working together doesn't matter. The people who did know,
7 saw it with their own eyes because it was true.

8 Okay. How much time. See how much more I can argue
9 to you.

10 I'm going to address some of Mr. Dinnerstein's
11 arguments very briefly. He made a bunch of arguments about the
12 murder of Alston. He argued there weren't two shooters, just
13 Parsons. He argued the motive was really over Parson's
14 personal beef. An independent act by this sociopath Parsons,
15 he said. Parsons told you the way it happened, where it
16 happened, how it happened. That testimony was corroborated by
17 so many pieces of evidence.

18 Just on the can't be two shooters argument. No
19 witness told you that .40 couldn't be fired by two people.
20 Mr. Dinnerstein wants you to believe that is the case, but when
21 he had the ballistics expert and the two ATF agents on the
22 stand, he didn't ask them about that. He just speculated about
23 it and instead he focused on what Mr. Hill and Mr. Villafranco
24 told you about hearing rapid shots. The shots were fired
25 rapidly. What does that even mean? Nothing. It doesn't mean

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Rebuttal - Ms. Heller

1 that the gun couldn't have been passed from Colon to Pemberton.
2 Excuse me. Colon to Parsons. Remember, Parsons testified that
3 he grabbed the gun from Colon. Another incident of him not
4 minimizing, by the way. He grabbed it and it happened fast.
5 No witness told you that Parsons did the shooting alone. In
6 fact, every piece of evidence that came in showed you that
7 there were two shooters and those shooters were Parsons and
8 Colon.

9 THE COURT: Ms. Heller, please begin to conclude your
10 remarks.

11 MS. HELLER: Thank you.

12 All right. A few briefly of Mr. Miranda's arguments.
13 The phantom gun. The gun was not a phantom. Devin Parsons
14 described it in detail. 17 shot 9, silver and black.
15 Mr. Folks told you about the gun and Mr. Pemberton told you
16 about the gun. The gun was real.

17 Mr. Becker says Parsons' account can't have been true
18 because of the geography of the Maria Lopez Houses and
19 Ms. Kanote's apartment. Dismiss that argument, ladies and
20 gentlemen. Mr. Parsons never told you where Mr. Miranda went
21 within Maria Lopez. He didn't say that Mr. Miranda said he was
22 going home to his apartment to get the gun. He could have gone
23 anywhere in Maria Lopez to get that gun. What we do know is he
24 asked Mr. Parsons to carry it for him. And the two men later
25 dropped it off on the second floor of 681 Courtlandt, which is

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Rebuttal - Ms. Heller

1 where Earl Pierce lives. That's how Pierce got the gun which
2 was used to shoot Tarean Joseph on September 13, 2010.

3 Mr. Becker argues because we don't have this gun or
4 because he doesn't believe the gun exists, that Miranda is not
5 guilty of the firearms charge. That's not true. All the
6 cooperators testified about the block guns that were stashed
7 all over Courtlandt Avenue, in the grass, in pizza boxes. They
8 could be used for anyone's defense if they needed them.

9 Now, Mr. Miranda sold alongside these men, with these
10 men. They all had access to these guns. Mr. Miranda had
11 constructive possession over the guns in that way. And Judge
12 Pauley will explain to you what that means.

13 One other -- oh, and one other argument about the gun.
14 Mr. Becker just told you that there is no evidence that
15 Mr. Miranda had ever seen a gun ever. Or, sorry, had ever been
16 seen with a gun ever. Remember, this is a man who actually had
17 a tattoo of two guns on his body. So that argument doesn't
18 hold much water, ladies and gentlemen.

19 He also argued about Miranda being a shooting victim.
20 We submit that's completely irrelevant to the charged crimes.
21 And one thing to note, if you think back to the testimony of
22 Agent Castillo. Mr. Miranda refused to tell her who shot him,
23 ladies and gentlemen.

24 Now, in a minute or two I have that remains -- okay,
25 before I get to my final conclusion, one point on the RICO

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Rebuttal - Ms. Heller

1 conspiracy for Mr. Miranda. Not only do you have the fact that
2 he agreed that everyone that's part of this enterprise would
3 sell drugs together. You also have that he lent his gun to
4 someone who used that gun to avenge the death of the crew's
5 leader, T-Money. It's overwhelming evidence of his involvement
6 in that conspiracy.

7 All right. Two concluding points in the two minutes I
8 have. During several of the defense summations, counsel went
9 through each piece of evidence the government had on a
10 particular crime and tried to discredit each individual piece
11 of evidence as proof of nothing. Like taking a puzzle. Let's
12 say the puzzle is a picture of an elephant. Taking the piece
13 that has an eye on it and saying, this is just an eye, it's not
14 an elephant. This is just a tail, that's not an elephant.
15 This is his toe, it's not an elephant. You cannot do that with
16 each of the puzzle pieces, pull a piece out saying it's
17 nothing, put it down. Mr. Miedel did a lot of that this
18 morning.

19 Use your common sense. You can't look at the evidence
20 in isolation. Not the way the world works. You have to put it
21 together, and you put it together, it is a puzzle, it is a
22 picture of an elephant, right.

23 And here it is, the picture of the crimes that were
24 charged. Dozens of pieces of corroboration for each charged
25 act. They all fit together.

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Rebuttal - Ms. Heller

1 Now, it can be hard to judge someone else. But I
2 expect the judge is going to instruct you, you have to decide
3 this case without bias or prejudice, and without sympathy. You
4 have to apply the standard proof beyond a reasonable doubt.
5 That standard is the same standard that's always been applied
6 in every criminal case in the history of this country. We've
7 met it here.

8 We ask you to consider the evidence and the facts.
9 That's all we've asked you to do from the beginning of the
10 case. Do that when you go back in the jury room. Don't be
11 distracted by the nonsense about the cooperators. Check the
12 record. Use your common sense. Follow the judge's
13 instructions. Don't reinvent the wheel. The answers are all
14 there right in front of you.

15 If you do that, there is only one verdict that you can
16 return that's consistent with the evidence, and with the truth.
17 These defendants are guilty beyond a reasonable doubt of all
18 charges. Thank you.

19 THE COURT: Members of the jury, we've now concluded
20 closing arguments. Tomorrow morning we're going to turn to the
21 final phase in any trial before your deliberations. My charge
22 on the law. That is my instructions on the law to you. As
23 I've previously mentioned, my charge is lengthy. In fact, my
24 charge is 137 pages. I will provide copies of the charge to
25 you tomorrow morning to have in the jury box with you as I read

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1 the charge to you. You can read along with me, or not. That's
2 entirely up to you. But, you must pay attention to the
3 instructions as I deliver them to you here in open court. I'll
4 also review with you a jury verdict form that we have prepared
5 to aid you in your deliberations in this case.

6 I expect that I will complete my charge and review of
7 the jury verdict sheet with you by around lunchtime so that
8 you'll retire to the jury room to either have lunch and then
9 begin deliberations, or deliberate while you're having lunch.
10 That will be entirely up to you.

11 But your first order of business when you retire
12 tomorrow to begin deliberations is to select one of your
13 members as your foreperson who will be responsible for
14 communicating with the Court by note regarding any matter.

15 So, for now, I want you to put these matters out of
16 your mind. Relax. It's been a long trial, certainly longer
17 than any of us anticipated. But, I can assure you that all of
18 the attorneys involved in this case worked very hard to present
19 the case efficiently to you. And listening as you have is
20 tiring. So I'm sure you're all exhausted. Get a good night's
21 sleep. Tomorrow you will have your lunch in the jury room.

22 You will deliberate tomorrow until 5 o'clock unless
23 you choose to work later. That will be a decision entirely up
24 to you. In the end you will have as much time as you need to
25 deliberate on this case in order to reach a verdict with

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1 respect to each of the 22 counts of the indictment as they are
2 charged against all or against some of the defendants. That's
3 what lies ahead.

4 We're going to recess now. Have a great evening and
5 safe trip home. We'll see you all bright and early tomorrow at
6 10 o'clock and we'll get to work on the instructions of law.
7 Keep an open mind and come to no conclusions. Don't discuss
8 the case. Please recess the jury.

9 (Jury excused)

10 THE COURT: Are there any issues that counsel wish to
11 raise?

12 MR. LEE: Yes, I have something, your Honor.

13 THE COURT: Go ahead, Mr. Lee.

14 MR. LEE: Yes, your Honor, I believe in her rebuttal,
15 Ms. Nola crossed the boundary from legitimate argument to a
16 gross inaccurate misstatement of the testimony in this case
17 with regard to the cell site testimony. And my request is
18 either to be given 5 to 10 minutes surrebuttal, or to have a
19 correction made either by the Court or by her.

20 Specifically, your Honor, she cited that the cell site
21 evidence put, and I'm paraphrasing, Mr. Meregildo at the scene
22 of the murder. That flies in the face of the testimony. I can
23 cite particular transcript pages right now from the Special
24 Agent Perry that said that that evidence can only -- it was not
25 triangulated. It can only to an accuracy of about a half mile

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1 radius to a mile indicate the location of a phone. And her
2 statement is totally inaccurate, it is a misleading statement
3 of the testimony.

4 And, she made a big point that I did not comment on
5 it. The reason I did not comment, even though I have now right
6 in my computer a fully prepared summation with regard to that
7 aspect of the evidence, that I can present in 5 to 10 minutes
8 to this jury, is that Mr. Fee actually on his summation did
9 correctly state the import of that evidence and I did not
10 comment on it in my summation. He said that that cell site
11 evidence places, quote, the phone in the area, quote unquote.
12 I did not contest that. That's consistent with the testimony
13 of Special Agent Perry.

14 But Ms. Heller's statement that it puts him at the
15 scene of the murder is an inaccurate, misleading, misstatement
16 of the testimony. I should have an opportunity either to in 5
17 to 10 minutes correct that to the jury, or in some other manner
18 that your Honor thinks is appropriate to correct what is a
19 factual gross misstatement of the testimony by the government.

20 MS. HELLER: Your Honor, we submit that it's argument.
21 I obviously had to speak very quickly and couldn't choose every
22 word as carefully as I wish I could. I still think it's not
23 inaccurate to say he's at the scene of the crime. Certainly
24 the maps put the scene of the crime and fanned the cell site
25 all around it.

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1 But, we certainly oppose Mr. Lee's request for any
2 kind of instruction. I cannot count the number of
3 mischaracterizations we believe were made by defense counsel.
4 We didn't have time to respond to all of them. We just chose a
5 handful. We could go on nearly for days and weeks if every
6 counsel is given the chance to respond to what they believe are
7 mischaracterizations of the record. It is all on the record.
8 The jury can ask for any of the testimony if they want to see
9 it.

10 MR. LEE: She cited that as particularly devastating,
11 damning piece of evidence that's incontestable. And there is a
12 big difference in my mind if the government inartfully and
13 improperly selected a word, and the prejudice should not be
14 visited upon the shoulder of the defendant. If she said at the
15 scene of the murder, as versus as Mr. Fee accurately recounted
16 and represented the testimony of Agent Perry in the area, a
17 half mile to a mile radius is not at the scene. It's in the
18 area. I think that's legitimate argument. But to say at the
19 scene is a misstatement on the record before this jury, and
20 they should not be misled by that.

21 MS. HELLER: It was argument. Nine hours of records,
22 they all pointed to the same address.

23 THE COURT: Well, I'm going to look at precisely what
24 Ms. Heller did say on that point. It is argument at the end of
25 the day, Mr. Lee. I'm going to give the jury an instruction as

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1 I have several times during the course of these closing
2 arguments that argument is not evidence. And the government,
3 Ms. Heller, also referred to where in the testimony this could
4 be found. But I will look at it and consider it overnight.
5 I'll tell that you any application on behalf of the defendant
6 to give a surrebuttal is denied. If there is going to be
7 anything, it's going to be a two sentence curative instruction
8 from the Court.

9 Now, any further applications?

10 MR. MIEDEL: Yes, your Honor. I just would like to
11 briefly expand on my objection which was to Ms. Heller's
12 surrebuttal which was -- rather, rebuttal, I'm sorry, which was
13 when she was vouching for the honesty or truthfulness of the
14 cooperators. I think she went beyond fair comment by stating
15 that the government is fact checking everything that they say
16 and so therefore they have to be truthful. That, that is an
17 extraordinary statement in terms of vouching, and in terms of
18 essentially placing the government sort of as a witness in this
19 case. And what they do to verify that their witnesses are
20 being honest. So I would ask for a curative instruction on
21 that.

22 MS. HELLER: There were numerous arguments about
23 things we didn't do, why we didn't do them, and I didn't have a
24 chance to respond to those. But, I cited specific things we
25 had done. Gotten cell site evidence, talked to lay witnesses,

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1 talked to ballistic experts. It's witnesses we put on.

2 THE COURT: It is an accurate statement of what the
3 government was doing, Mr. Miedel, which is why I overruled your
4 objection. And so I deny your application for a curative
5 instruction.

6 MR. LEE: Your Honor, just lastly, would your Honor
7 want me to e-mail you the testimony that I have already of
8 Agent Perry which I believe is accurate, and what Mr. Fee
9 represented, but it will allow your Honor to see it and why I
10 believe Ms. Heller's comments fly in the face of that
11 testimony. I can e-mail those transcript portions to your
12 Honor if you wish.

13 THE COURT: Go ahead and e-mail them.

14 MR. LEE: Thank you, your Honor.

15 MS. HELLER: We would say in closing we weren't
16 characterizing Agent Perry's testimony. We were arguing the
17 facts.

18 THE COURT: Just give me the page cites by e-mail.

19 MR. LEE: Yes, your Honor. I will do that. Thank
20 you.

21 THE COURT: Mr. Becker.

22 MR. BECKER: Thank you, your Honor. I am concerned
23 greatly that some of Ms. Heller's comments in her rebuttal
24 summation constituted an amendment of the indictment or
25 certainly a variance in their theory of proof against

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1 Mr. Miranda. And it devolved to Ms. Heller essentially saying
2 that if somebody was on the block selling drugs with anybody
3 then they're part of this whole enterprise and part of this
4 whole conspiracy.

5 It was just a few days ago that your Honor took note
6 of the fact that certainly wasn't what the charge was in this
7 case. Just because somebody was selling drugs in the
8 Courtlandt Avenue area that they were part of this conspiracy.
9 Let alone part of the enterprise. That was part of the reason
10 that I think your Honor ceded to the defendants' request to
11 give a multiple conspiracies charge.

12 Ms. Heller went even further I think in an improper
13 fashion by essentially saying -- not essentially saying, by
14 saying that Mr. Miranda along with T-Money were really the
15 principal members of this enterprise. That they were the ones
16 who got it going and kept it going. And it bears noting that
17 Mr. Miranda is not even charged in count one with being a
18 member of this enterprise. He's not charged with a violation
19 of RICO. And for the government to stand up now and urge to
20 the jury that the evidence shows that he was out there selling
21 and he was an integral part of this enterprise based on the
22 evidence, that's not what he was charged with, your Honor.

23 So, I'm not sure what the remedy is. I am moving for
24 a mistrial because I want to assure that that motion is made.
25 But, if the Court is disinclined to grant that, I do think the

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1 Court when it instructs the jury, it needs to tell the jury in
2 emphatic terms that Mr. Miranda is not even alleged to be a
3 member of this enterprise. He's not charged.

4 I realize that the Court's current charge says three
5 people are charged in count one and we've addressed that. But
6 there needs to be some corrective action taken so that the jury
7 is not confused. The government's made a lot of arguments in
8 this case about that arguments by the defense or examinations
9 by the defense were confusing to the jury. I can't think of
10 anything more confusing than to tell the jury that Mr. Miranda
11 is like the heart and soul of this criminal enterprise when
12 he's not even charged in that count.

13 And it also brings into focus the question what is the
14 conspiracy in this case? I really, my whole summation was a
15 summation and my whole defense in this case was geared towards
16 maintaining credibility with this jury. I made a decision
17 based on close consultation with Mr. Miranda that for me to
18 stand up and proffer a defense he had nothing to do with drugs
19 and it was all lies and Agent Castillo made up his post-arrest
20 statements was absurd and it wouldn't fly and it wasn't
21 consistent with the evidence.

22 What is consistent with the evidence is the arguments
23 I made. It is the argument that he was an independent seller.
24 And that he wasn't part of this enterprise and/or conspiracy.
25 And it was supported by lots of testimony that I addressed in

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1 my summation. And for the government to tell the jury
2 disregard all of that, because count one never says you have to
3 be a member of GFC. If you are selling drugs out on the
4 street, that's good enough. For her to tell the jury that, and
5 for that to go uncorrected, is going to work a terrible
6 prejudice to Mr. Miranda.

7 And your jury charge, which I know and I can't tell
8 you how much I respect the care that you gave to it and the way
9 you heard from counsel. All of our discussions about what
10 should be in the jury charge and all your Honor's rulings
11 predated what you just heard Ms. Heller tell this jury. So
12 respectfully, it is not enough what's in there now. There
13 needs to be a curative instruction at a minimum if not a
14 mistrial. Correcting the impression that Ms. Heller gave. And
15 making it clear to this jury what the conspiracy is and what
16 the enterprise is, and is not.

17 And then finally, this is on a separate point, when
18 Ms. Heller was arguing to the jury that they could find that
19 Mr. Miranda possessed all the guns that you heard about in the
20 testimony, because the judge will instruct you that anyone had
21 access to those guns, anyone involved, anyone who was selling
22 drugs had access to the guns and therefore Mr. Miranda did, and
23 that constitutes possession, the testimony was crystal clear
24 that people who worked for T-Money had access to the guns.
25 People who worked for T-Money had -- I read this record over

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1 the Thanksgiving Day break. And that's what I saw.

2 You know, it's interesting. The government is
3 supposedly doing a rebuttal summation here to rebut what I
4 said, and yet they stand up with slides that they obviously
5 prepared before I even spoke addressing things that I didn't
6 say. And putting up a slide of something T-Money says and
7 leaving out -- about the hundred grams and leaving out the next
8 line in the testimony is, well, what did you hear Miranda say?
9 Oh, I don't remember him saying anything. You know. That's
10 also in there. They left that out. That's a third point.

11 So I've got three points, your Honor. I hope they're
12 clear. One is the variance for the indictment for which there
13 should be a mistrial or at a minimum a curative instruction and
14 also a clear delineation to the jury in the Court's jury charge
15 as to what this conspiracy is and what it isn't. It is not
16 just because you're selling drugs on Courtlandt Avenue. And
17 the other arguments that I made as well, your Honor, which
18 should be considered by the Court. And there should be
19 corrective action taken, thank you.

20 THE COURT: Ms. Heller.

21 MS. HELLER: A few things. Mr. Becker didn't object
22 once in my summation. But I'm not sure what he was listening
23 to. I don't think I said what he is saying I said. I
24 certainly never said Mr. Miranda was the heart and soul of the
25 conspiracy or the central figure. I address a few of the

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1 arguments at the end. And I had transcript cites. I had six
2 specific transcript cites on drugs. And I had three specific
3 transcript cites on guns. I tried to argue from the record,
4 although I didn't have time to read the quotes. And we have
5 different views of what the evidence shows. That is what
6 argument is for.

7 I think the charge is absolutely clear. There is no
8 constructive amendment. I never mentioned count one at all in
9 the entire summation. The only count I mentioned with
10 reference to Mr. Miranda was count two at the very end, and I
11 said here's how you know he's guilty of both the drug sales and
12 the gun possession. The gun that was linked to kill, to avenge
13 the death of the leader of the enterprise.

14 I just don't think there is any basis -- certainly not
15 for a mistrial, but for anything that Mr. Becker is asking for.
16 And as to his other arguments, it's, again, it's argument. We
17 all disagree with each other's views of the evidence. And
18 that's why what we are saying is not evidence. The testimony
19 is.

20 MR. BECKER: Just so the record is entirely clear for
21 the Court. The improper argument about Mr. Miranda suddenly
22 morphing into someone who kept this enterprise humming and was
23 an integral member of it, was made for the first time yesterday
24 by Mr. Fee. And what I did, and I thought yesterday it was
25 objectionable, so what I did today was I tried to make very

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1 clear what the conspiracy charge was and was not against
2 Mr. Miranda. And I tried to be very faithful to it. That he's
3 charged with conspiring with these people. And I was very
4 careful about what I said and what I didn't say. And so, I had
5 hoped that that would put it to rest. But then Ms. Heller in
6 effect either resurrected or repeated and emphasized Mr. Fee's
7 improper arguments. And the combined effect of both is, it
8 seems to me, to leave this jury with the misimpression of what
9 the charges are against this man and what they have to do to
10 find him guilty, and at a minimum it's going to lead to
11 confusion. And it's improper. So I ask again for the relief
12 that I requested a few moments ago.

13 THE COURT: All right. First, the defendant Miranda's
14 application for a mistrial is denied. Second, I don't recall
15 hearing some of the things that you've described, Mr. Becker,
16 in Ms. Heller's sur-reply, but I will go back and look at the
17 transcript this evening. And so if there is some further
18 instruction that's appropriate, I'll let you know tomorrow
19 morning after I've reviewed the transcript.

20 I do think that the charge tries to painstakingly
21 differentiate the various claims against the various
22 defendants. And to that end, now that closing arguments are
23 complete, I want to share with you a flow chart that I have
24 prepared, because unfortunately as I commented earlier in this
25 trial, the way in which the indictment is framed is not the way

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1 in which a case should be presented to a jury. So, we're in
2 the awkward position of having the first two counts charged in
3 the indictment at the very end of the charge and the jury
4 verdict sheet, because as a matter of pure logic that's the
5 only way that you can get there.

6 But, if I haven't said it before, I would certainly
7 suggest to the government in the future, especially with 13
8 superseders, that at some point, they think about how it would
9 actually be presented to a jury so that it could be sorted out.
10 Because this, in my view, is not the model for it.

11 And none of you have really explained any of this in
12 the nearly 11 hours of closing arguments to the jury. Nobody,
13 nobody even gave like a one-minute description of what a
14 conspiracy is. Not one of you. It's amazing.

15 But several of you have cautioned the jury that they
16 can look forward to being overwhelmed tomorrow. So, in an
17 effort to try to avoid having the jury overwhelmed, and because
18 so many people, perhaps even some of the jurors, get most of
19 their information through pictures and U.S.A. Today, I prepared
20 a series of appendices. I'm going to distribute them now to
21 you. We'll take a short recess so you can take a look at them.
22 And I'd like to discuss with you when we return whether these
23 will be appropriate to offer a further explanation or decision
24 tree to the jury as to what they have to do before they start
25 laboring through a 13-page jury verdict sheet which I'm going

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1 to have a word count done on it so that I can just put it into
2 the record.

3 So, at this time I'm going to direct that the
4 defendants be escorted from the courtroom for a short recess.
5 We'll distribute this chart. We'll take five minutes and we'll
6 come back.

7 (Defendants not present)

8 THE COURT: I'm mindful that some of you have other
9 engagements. I don't think this will take very long. And I'm
10 looking to see what your view is as to whether or not this
11 would be helpful in the end.

12 I've prepared it for each defendant and I put them in
13 binders like the government. At the very back of this document
14 that's being distributed are essentially four separate
15 appendices, one for each of the defendants in defendant order.
16 It would be what I would see as the decision tree that would be
17 used to give a picture with the charge.

18 So, for example, with respect to all the narcotics
19 related charges against each of the defendants, which is the
20 first page of the four different appendices, I would propose
21 distributing that to the jury and having the government put it
22 up on the screen at page 69 of the charge, after I've discussed
23 all of the narcotics offenses in the charge. And, then, when
24 it comes to all of the racketeering and murder counts, I would
25 propose putting those for the defendants to whom those charges

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1 apply, I would propose publishing those and briefly discussing
2 them with the jury after page 134 of the charge.

3 So take a few minutes and we'll reconvene in five
4 minutes.

5 (Recess)

6 THE COURT: Let's bring out the defendants.

7 (Defendants present)

8 THE COURT: All right. I think first things first.
9 My deputy reminds me during the recess that, Mr. Miedel, while
10 it was discussed this morning, I don't know that you have
11 withdrawn on the record the application that you made last
12 evening.

13 MR. MIEDEL: You're right, that has not been withdrawn
14 on the record. And I'll do so now.

15 THE COURT: So the defendant Pierce withdraws the
16 application?

17 MR. MIEDEL: Yes, he does.

18 THE COURT: All right. Thank you. Now, with respect
19 to these charts. Do counsel think this will be helpful?

20 MR. MIEDEL: I'm sorry, your Honor.

21 THE COURT: Or problematic?

22 MR. MIEDEL: Can we go back one second. I want to
23 make sure the record is clear what we're referring to, which is
24 that I believe yesterday morning I made an application about
25 the RICO charges. And that application is the one that I'm

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1 withdrawing at this point.

2 THE COURT: Thank you.

3 MR. MIEDEL: And your Honor, on this topic, if you
4 want to hear from me I think they're helpful. I think this
5 would be helpful to us. We do have one comment or concern
6 about the chart entitled acts of racketeering against Earl
7 Pierce.

8 THE COURT: All right. Hang on one second. All
9 right, I'm there.

10 MR. MIEDEL: The sort of concluding box on the far
11 right states that two or more racketeering acts if proved
12 consider count one. I think there should be some sort of
13 corollary, which is if only one or no racketeering acts are
14 found, it means not guilty of count one.

15 MS. HELLER: Your Honor, I think this starts to get at
16 our view which is that we think it may end up being more
17 confusing for the jury and duplicative of the verdict sheet,
18 but incomplete and needing things like what Mr. Miedel is
19 suggesting to make it the same as the verdict sheet. What our
20 main concern is, is that some of the lines we think would need
21 "ands" in between them or "ors" in some cases to make clear.
22 Like, just for an example, I'm looking at the first page which
23 is narcotics related charges.

24 THE COURT: You're back -- all right.

25 MS. HELLER: Yes. We just looked at the first page as

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1 an example. Where the far right row of columns, the bottom two
2 we think it would need to say consider count 15 and consider
3 count 22. And then skipping ahead two pages to acts of
4 racketeering against Joshua Meregildo, for the left-hand column
5 we think it would need to say guilty of count five or guilty of
6 count six.

7 (Continued on next page)

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1 THE COURT: It's a visual aid.

2 MS. HELLER: Right. But your Honor, we think that it
3 could be even more confusing and that the verdict sheet spells
4 it out all in plain English, and then they might start to
5 compare this to the verdict sheet and try to reconcile them,
6 and it's another document to consider, and we just are
7 concerned that, you know, people are going to want to start
8 adding things or subtracting things and then we end up sort
9 of -- we were all happy with the verdict sheet, and now we have
10 another document that could end up confusing things. That's
11 our concern.

12 And, you know, also, for -- for the narcotics-related
13 charges, where it says guilty and crack quantity of 280 grams
14 or more, there's no mention of lesser included quantities, and
15 maybe some defendants would want that. It just sort of gets
16 into a number of cans of worms that, you know, might not be
17 worth it. Of course in the end it's the court's decision, but
18 we're a little concerned that might lead to more confusion.

19 MR. BECKER: Your Honor, I don't know how the court
20 wants to proceed, but if it please the court, I'd like to
21 respond to Ms. Heller's comments just now about the
22 narcotics-related flow chart, and I will confess I was reading
23 something, but there's only one piece of paper in these flow
24 charts that relates to Mr. Miranda. It's the very last piece
25 of paper. And I think Ms. Heller was saying that if the

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1 court's going to give this chart or use this chart, there
2 should be a reference to amounts less than 280; correct? Okay.
3 I disagree with that. I think it's very clear what the court
4 is saying in this chart is that so long as you find he
5 conspired in violation of law as charged in Count Thirteen,
6 then, as the court instructs, that he's guilty, but then you're
7 saying that's also true if you find that he conspired and the
8 quantity was 280 grams or more.

9 I have a different objection. My objection is
10 consistent with the objection I lodged earlier, and I know the
11 court has rejected that, so I imagine the court might reject
12 this as well, but inasmuch as it's now on the flow chart, I
13 still would like to make it, and that is, it's my view that the
14 quantity amount, the 280 grams, is an element of the offense
15 that Count Thirteen charges and so the jury should not be
16 permitted to even consider Count Twenty-two unless they find
17 proof beyond a reasonable doubt that Mr. Miranda violated
18 (b)(1)(A), namely, conspiracy to distribute more than
19 280 grams. Anything less than that, they should not be
20 considering Count Twenty-two because Count Thirteen charges
21 280 grams. I understand the court rejected that with respect
22 to the lesser included argument that I made earlier, but I
23 restate it here.

24 THE COURT: All right.

25 MR. BECKER: Obviously you're going to deny it.

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1 THE COURT: I'm consistent. I try to be consistent,
2 so the argument is rejected.

3 MR. BECKER: Yes, I understand.

4 THE COURT: Mr. Lee or Mr. Dinnerstein, do you want to
5 weigh in on this?

6 MR. DINNERSTEIN: Your Honor, I actually think it is
7 helpful to the jury.

8 I do have a comment about Mr. Miranda's flow chart,
9 and maybe I'm just missing what you're actually saying. It
10 says if he's found guilty of Count Thirteen, you're supposed to
11 consider Count Twenty-two, and then there's another line that
12 says, if he's found guilty and the crack quantity is 280 grams
13 or more, you also consider Count Twenty-two. So I'm not sure,
14 if the jury finds him guilty of less than 280 grams, will
15 they -- are they being asked to consider Count Twenty-two?
16 Because from the third portion, it sounds like they ought not.
17 So I'm not sure what that means.

18 And actually, as it applies to Mr. Colon, as to Count
19 Thirteen, you say, guilty, you consider Count Twenty-two, but
20 if it's guilty and more than 280 grams, you consider both
21 Counts Twenty-two and Count Sixteen. There isn't a similar
22 circumstance with Mr. Miranda, so I'm not sure -- I mean,
23 there's no Count -- the equivalent to Count Sixteen for
24 Mr. Miranda. Isn't that right? It only makes reference to
25 Count Twenty-two.

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1 MR. BECKER: Your Honor, Mr. Dinnerstein's comments, I
2 will confess, those have me a little perplexed about why the
3 280 is in there, and I say that obviously without waiving or
4 forfeiting the argument I made a moment ago, but given the
5 court's ruling that no quantity need be found in order for the
6 government -- in order for Mr. Miranda to be convicted of Count
7 Thirteen, to be, quote, found guilty, I'm not sure what the
8 court's reason was. I'd certainly love to know because I might
9 endorse it, but it's not apparent to me.

10 THE COURT: It makes a difference for the other
11 defendants in terms of the murders in furtherance of a drug
12 crime, and so maybe it should be omitted with respect to your
13 client. I was only keeping it parallel, but it really only
14 bears on the co-defendants.

15 MR. BECKER: Given the court's -- well, your Honor, I
16 don't want to speak rashly, and maybe we could -- I don't know
17 if anybody else has anything and we can come back to this. I'd
18 like to give it a couple minutes of thought.

19 THE COURT: We can think about it, okay? I'm not
20 wedded to it. I thought it might be helpful. I didn't know
21 who might display something during summations. I thought the
22 government might come up with some sort of treatment. But they
23 didn't, and I decided I wasn't going to share what I was
24 thinking with any party --

25 MR. BECKER: Your Honor, I did tell the jury --

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1 THE COURT: -- prior to completion of closing
2 arguments.

3 MR. BECKER: I did tell the jury in my summation, I
4 believe, that if they don't -- if they find him not guilty of
5 Count Thirteen, they don't even consider the gun count. I do
6 recall telling them that. So I, in principle, welcome this
7 flow chart. The only issue is the one that I raised. But I do
8 think it would be helpful.

9 MR. LEE: Your Honor, in connection with the last
10 chart as to Meregildo, acts of racketeering --

11 THE COURT: Let me just get it in front of me.
12 Go ahead.

13 MR. LEE: That chart is different from the prior two
14 charts in that the prior two charts clearly -- the boxes
15 indicate, whether guilty or not guilty, what you should or
16 should not consider. Now going back to the third chart, what
17 it has is the three racketeering acts and then it has three
18 lines going into the final box on the right. So similar to
19 what Mr. Miedel was suggesting, perhaps some word that has
20 "only if two or more racketeering acts are proved," I think
21 that might make it clearer, or something like what Mr. Miedel
22 suggested. A little bit different, that third box.

23 MR. MIEDEL: Your Honor, aside from that question, at
24 least as far as Mr. Pierce is concerned, we really very
25 strongly think that these charts are going to be helpful,

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1 especially given the concern that I raised yesterday about the
2 possibility of inconsistent verdicts, which still remains, even
3 though technically I don't think I have a legal argument, which
4 is why I went through it, but I think the fear remains that
5 there's a possible inconsistency, and I think this chart
6 clarifies that, so we are strongly in favor of it.

7 MR. LEE: Yes, and Meregildo is favor of the charts if
8 I didn't say it.

9 MS. HELLER: Your Honor, I think we continue to be
10 opposed to it. We think it's just another document that now is
11 going to -- there are differences between this and the verdict
12 sheet. It's going to add confusion.

13 THE COURT: I can put "and/or"s into the line.

14 MS. HELLER: At a minimum I think that's necessary,
15 because the boxes say "and" and sometimes --

16 THE COURT: I think the suggestion was an appropriate
17 one.

18 MS. HELLER: But there are other things, you know, in
19 terms of -- the 280 grams finding isn't anywhere with respect
20 to the narcotics count. It's only tied into the murder counts.
21 And so then you don't have the special findings on here. I
22 mean, there are a lot of things that are on the verdict sheet
23 that are not on here, and then we're quibbling over language
24 and guilty and not guilty, and it just seems like it's a third
25 thing that the jury's going to have to have and weigh, you

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1 know, comparing three things in front of them, and it may end
2 up taking them longer. I don't know. At a minimum we think
3 the "ands" and "ors."

4 MR. MIEDEL: Your Honor, I think Ms. Heller's concern
5 can be cured by an introductory statement by the court that
6 this is supposed to be an aid to the jury, it's not in place of
7 the verdict sheet, and that they can consider it that way.

8 THE COURT: All right. Look, I'm going to take your
9 suggestions overnight. I'll make some changes. I'm not going
10 to do it unless everybody is on board. And I thought it would
11 be just helpful for those who get a picture in the same way
12 that the government thought that all of its ballistics evidence
13 was much more understandable when it was put up in a chart or
14 in a pictorial for the jury. And we're dealing with a very
15 complicated indictment here, and I think only two counsel
16 mentioned that there were 22 counts charged in this case. So I
17 don't want the jury to think that they're walking into a buzz
18 saw tomorrow, but it's all devolving upon the court to now
19 explain to the jury what all the theories are in the case, and
20 I can't even do it in a consecutive order because if I did, the
21 charge would be 250 pages long and the jury would tune me out,
22 and they'd be totally justified.

23 And if the government has any further suggestion on
24 these charts tonight, they can just send us something. I don't
25 want to add to the confusion. I want to try to dispel some

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1 confusion in the case.

2 Anything else this evening?

3 MR. BECKER: Just quickly, your Honor was good enough
4 earlier to say that you would consider further my argument
5 about Miss Heller's comments regarding Mr. Miranda being
6 integral to the, you know, enterprise and the variance
7 argument.

8 THE COURT: Yes.

9 MR. BECKER: May I just respectfully request that the
10 court also consider Mr. Fee's comments yesterday, because
11 that's really, as I say, when it started, and I'm happy if --
12 as soon as I get home tonight, to send an e-mail to the court
13 with page references regarding that. It's the same issue. I
14 just --

15 THE COURT: Send me --

16 MR. BECKER: I will, your Honor.

17 THE COURT: All right.

18 MR. BECKER: And your Honor, is the court considering
19 going through the charge in one shot or will there be a break?
20 I don't know --

21 THE COURT: There will have to be a break, I think,
22 because, between going through the charge and the verdict
23 sheet, it's probably going to take close to three hours, and
24 after an hour and a half or hour and three quarters, I'm going
25 to let the jury take a quick break. The same reason that I

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1 don't allow closing arguments to go on for hours and hours.

2 MR. BECKER: My question was a veiled way of making
3 the suggestion.

4 THE COURT: No, fine.

5 MR. BECKER: Thank you. Thank you.

6 MR. DINNERSTEIN: Your Honor, what's your suggestion
7 regarding the alternates? Do you keep them around for a while
8 or --

9 THE COURT: I will send them home after the jury
10 retires to begin its deliberations. I'll ask juror number 13
11 to report to my chambers the following morning in the event
12 that we don't have all 12 jurors here, and I will keep both of
13 them instructed not to discuss the case with anyone in the
14 event that I need them. As you're undoubtedly familiar, a year
15 and a half ago, after five days of deliberations in this very
16 courtroom, I needed to replace a juror, and it became
17 profoundly disappointing that there was another juror who was
18 subject to a problem who also could have been replaced, that no
19 one bothered to tell me about.

20 MR. BECKER: Your Honor, just -- last thing. I
21 apologize if I was not clear enough about making any arguments
22 during my summation about what a conspiracy is. I do think
23 that I said to the jury it has to be a meeting of the minds.

24 THE COURT: You did say that. You did say a meeting
25 of the minds.

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1 MR. BECKER: And I thought I said with a common goal
2 and venture. I regret not having addressed it more, but I do
3 have a recollection of saying that.

4 THE COURT: An illegal purpose?

5 MR. BECKER: Did I say that?

6 THE COURT: No. I don't --

7 MR. BECKER: You know what, okay, I thought I did, but
8 perhaps the court's recollection is better than mine.

9 Last thing. I assume the court will permit the jury
10 to sit as long as it wants on Friday? It's not a question of
11 breaking early; right?

12 THE COURT: Yeah. Yeah.

13 MR. BECKER: Okay.

14 THE COURT: Anything else?

15 MR. DINNERSTEIN: I have to say I remember that I
16 punted on the issue of conspiracy.

17 MS. HELLER: Your Honor, for us it ended up on the
18 cutting room floor, regrettably.

19 THE COURT: There were lots of terms that were bandied
20 about, like "constructive possession." I mean, if I'm sitting
21 there, I'm wondering, what is that all about? Well, they're
22 going to learn it tomorrow morning.

23 All right. Look, everybody's worked very hard, and
24 you're to be commended for all that. We all get a little tired
25 in the afternoon. If you have some other further thoughts on

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1 the flow chart idea, send them to me. I'm not wedded to it,
2 all right? And I'm not going to go forward with it if anybody
3 has a serious reservation, but if I don't go forward with it,
4 and a day and a half later the jury is sending me a note
5 showing me that they are in the Serbonian Bog, I'm going to say
6 that I told you so. All right?

7 So have a good evening. The defendants may be
8 escorted from the courtroom.

9 (Defendants excused)

10 THE COURT: Have a good evening. 9:30 tomorrow.
11 9:30.

12 (Adjourned to November 28, 2012, at 9:30 a.m.)
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